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Rules, Regulations, Orders

TITLE 7—AGRICULTURE

CHAPTER III—BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE

[B.E.P.Q.–Q. 56]

MODIFICATION OF FRUIT AND VEGETABLE QUARANTINE REGULATIONS

Introductory Note

Inspection of fruits and vegetables offered for entry from Newfoundland during the period since the promulgation of Quarantine No. 56 the Fruit and Vegetable Quarantine, effective November 1, 1923, indicates that importations of fruits and vegetables from Newfoundland can be safely permitted on a basis comparable to those from Canada. The present revision of the regulations supplemental to Quarantine No. 56 is made therefore to place the entry of fruits and vegetables from Newfoundland and its mainland territory of Labrador on the same status as those from Canada, with the exception of potatoes, which have long been and still are excluded from Newfoundland on account of potato wart.

AVERY S. HOYT,
Acting Chief.

AMENDMENT NO. 1 TO THE RULES AND REGULATIONS SUPPLEMENTAL TO NOTICE OF QUARANTINE NO. 56, AS REVISED EFFECTIVE DECEMBER 1, 1936, GOVERNING THE IMPORTATION OF FRUITS AND VEGETABLES INTO THE UNITED STATES

Under authority conferred by the Plant Quarantine Act of August 20, 1912 (37 Stat. 315), as amended, it is ordered that regulation 2 (Sec. 319.56–2) of the Rules and Regulations supplemental to Notice of Quarantine No. 56 (Sec. 319.56), governing the importation of fruits and vegetables into the United States, as revised effective December 1, 1936, be, and the same is hereby, amended to read as follows:

Regulation 2

§ 319.56–2 *Restrictions on entry of fruits and vegetables.* All importations of fruits and vegetables must be free from plants or portions of plants, as defined in regulation 1 (*b*) (§ 319.56–1 (*b*)).

Dried, cured, or processed fruits and vegetables (except frozen fruits and vegetables), including cured figs, and dates, raisins, nuts, and dry beans and peas, may be imported without permit or other compliance with these regulations: *Provided*, That any such articles may be made subject to entry only under permit and on compliance with the safeguards to be prescribed therein, when it shall be determined by the Secretary of Agriculture that the condition of drying, curing, or processing to which they have been subjected may not entirely eliminate risk. Such determination with respect to any such articles shall become effective after due notice.

Except as restricted, as to certain countries and districts,[1] by special quarantines and other orders now in force and by such restrictive orders as may hereafter be promulgated, the following fruits may be imported from all countries under permit and on compliance with these regulations: Bananas, pineapples, lemons, and sour limes. Grapes of the European or vinifera type and any vegetable, except as restricted by special quarantine as indicated above, may be imported from any country under permit and on compliance with these regulations, at such ports as shall be authorized in the permits, on presentation of evidence satisfactory to the United States Department of Agriculture that such grapes and vegetables are not attacked in the country of origin by injurious insects, including fruit and melon flies (Trypetidae), or that their importation from definite areas or districts under approved safeguards prescribed in the permits can be authorized without risk.

The following additions and exceptions are authorized for the countries concerned to the fruits and vegetables listed in the preceding paragraph: *Pro-*

[1] See list of current quarantines and other restrictive orders and miscellaneous regulations, obtainable on request from the Bureau of Entomology and Plant Quarantine.

CONTENTS

RULES, REGULATIONS, ORDERS

(Continued on next page)

FEDERAL REGISTER

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CONTENTS—Continued

NOTICES

vided, That as to such additions and exceptions, the issuance of permits may be conditioned on presentation of evidence satisfactory to the United States Department of Agriculture that such fruits and vegetables are not attacked in the country of origin by injurious insects, including fruit flies and melon flies; or that their importation from definite areas or districts under approved safeguards prescribed in the permits can be authorized without risk.

Frozen or treated fruits and vegetables from all countries. Upon compliance with these regulations and with such conditions as may be prescribed by the Chief of the Bureau of Entomology and Plant Quarantine, fruits and vegetables which have been treated, or are to be treated, under the supervision of a plant quarantine inspector of the Department, will be permitted entry under permit at such ports as may be specified in the permit, when, in the judgment of the Chief of the Bureau of Entomology and Plant Quarantine, such importation may be permitted without pest risk.

Commonwealth of Australia—States of Victoria, South Australia, and Tasmania. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from the States of Victoria, South Australia, and Tasmania under such conditions and at such ports as may be designated in the permits.

New Zealand. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from New Zealand under such conditions and at such ports as may be designated in the permits.

Japan. Upon compliance with the regulations under quarantine No. 28 (§ 319.28), oranges of the mandarin class, including satsuma and tangerine varieties, may be imported from Japan at the port of Seattle and such other northern ports as may be designated in the permits.

Mexico. Potatoes may be imported from Mexico upon compliance with the regulations issued under the order of December 22, 1913 (§§ 321.1 to 321.8).

Argentina. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from Argentina under such conditions and at such ports as may be designated in the permits.

Chile. Upon compliance with these regulations, fruits other than those listed in the second and third paragraphs of this regulation may be imported from Chile under such conditions and at such ports as may be designated in the permits.

West Indies. Upon compliance with these regulations all citrus fruits from the West Indies may be permitted entry at such ports as may be designated in the permits.

Jamaica. Entry of pineapples from Jamaica is restricted to the port of New York or such other northern ports as may be designated in the permits.

Canada, and Newfoundland, including its mainland territory of Labrador. Fruits and vegetables grown in the Dominion of Canada and in Newfoundland,[2] including its mainland territory of Labrador, may be imported into the United States from these countries free from any restrictions whatsoever under these regulations.

General. In addition to the fruits, the entry of which is provided for in the preceding paragraphs of this regulation, such specialties as hothouse-grown fruits and other special fruits, which can be accepted by the United States Department of Agriculture as free from risk of carrying injurious insects, including fruit flies (Trypetidae), may be imported under such conditions and at such ports as may be designated in the permits.

This amendment shall be effective on and after February 27, 1940.

Done at the city of Washington this 24th day of February 1940.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 40-804; Filed, February 24, 1940; 11:10 a. m.]

CHAPTER V—FEDERAL SURPLUS COMMODITIES CORPORATION

DESIGNATION OF AREAS UNDER SURPLUS FOOD STAMP PROGRAM

Pursuant to the applicable regulations and conditions prescribed by Henry A. Wallace, Secretary of Agriculture of the United States of America, the following areas are hereby designated as areas in which food order stamps may be used and in which the agricultural commodities and products listed in Surplus Commodities Bulletin No. 4,[1] effective 12:01 A. M., E. S. T., December 15, 1939, shall be considered surplus foods on the effective dates of such areas.

The area within the county limits of Greenville County, South Carolina.

The area within the county limits of Saline County, Kansas.

The area within the county limits of Sedgwick County, Kansas.

The area within the county limits of Shawnee County, Kansas.

The effective dates for the above areas shall be announced by the local representative of the Federal Surplus Commodities Corporation for the respective areas in local newspapers of general circulation.

[SEAL] PHILIP F. MAGUIRE,
Executive Vice President.

FEBRUARY 21, 1940.

[F. R. Doc. 40-800; Filed, February 23, 1940; 3:17 p. m.]

[1] 4 F.R. 4725.

[2] The importation of potatoes into the United States is governed by the regulations issued under the order of December 22, 1913 (§§ 321.1 to 321.8).

DESIGNATION OF AREAS UNDER SURPLUS FOOD STAMP PROGRAM

Pursuant to the applicable regulations and conditions prescribed by Henry A. Wallace, Secretary of Agriculture of the United States of America, the following areas are hereby designated as areas in which food order stamps may be used and in which the agricultural commodities and products listed in Surplus Commodities Bulletin No. 4,[1] effective 12:01 A. M., E. S. T., December 15, 1939 shall be considered surplus foods on the effective dates of such areas.

The area within the city limits of Springfield, Massachusetts and the immediate environs thereof as defined by the local representative of the Federal Surplus Commodities Corporation. The posting of the definition of "the immediate environs" in the office of the local representative of the Federal Surplus Commodities Corporation shall constitute due notice thereof.

The area within the county limits of Jefferson County, Kentucky.

The area within the county limits of Pierce County, Washington.

The effective dates for the above areas shall be announced by the local representative of the Federal Surplus Commodities Corporation for the respective areas in local newspapers of general circulation.

[SEAL] PHILIP F. MAGUIRE,
Executive Vice President.

FEBRUARY 21, 1940.

[F. R. Doc. 40-801; Filed, February 23, 1940; 3:17 p. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER II—AGRICULTURAL MARKETING SERVICE

NOTICE UNDER PACKERS AND STOCKYARDS ACT[2]

FEBRUARY 24, 1940.

TO NEW MEXICO LIVESTOCK EXCHANGE COMPANY, INC.,
Albuquerque, N. Mex.

Notice is hereby given that after inquiry, as provided by Section 302 (b) of the Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 202 (b)), it has been ascertained by me that the stockyard known as the New Mexico Livestock Exchange Company, Inc., at Albuquerque, State of New Mexico, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 303 and 306 (7 U.S.C. Secs. 203 and 207) and other pertinent provisions of said Act and the rules and regulations issued thereunder by the Secretary of Agriculture.

[SEAL] GROVER B. HILL,
Assistant Secretary of Agriculture.

[F. R. Doc. 40-809; Filed, February 24, 1940; 11:53 a. m.]

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 3319]

IN THE MATTER OF THE STEEL OFFICE FURNITURE INSTITUTE, ET AL.

§ 3.27 (d) *Combining or conspiring—To enhance, maintain or unify prices.* Agreeing, combining or conspiring among themselves, in connection with offer, etc., in interstate commerce or in the District of Columbia, of steel vertical filing cabinets, steel horizontal sections and half-sections, and bookcases, steel hi-line and bookshelf units, steel card index cases, steel transfer cases, steel desks and tables, steel storage cabinets and wardrobes, and on the part of respondent Institute and respondent manufacturers of such products, to fix and maintain identical delivered prices, uniform discounts and terms and conditions of sale, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, The Steel Office Furniture Institute, et al., Docket 3319, February 20, 1940]

§ 3.27 (c10) *Combining or conspiring—To enforce or bring about resale price maintenance:* § 3.63 (c) *Maintaining resale prices—Combination.* Agreeing among themselves, in connection with offer, etc., in interstate commerce or in the District of Columbia, of steel vertical filing cabinets, steel horizontal sections and half-sections, and bookcases, steel hi-line and bookshelf units, steel card index cases, steel transfer cases, steel desks and tables, steel storage cabinets and wardrobes, and on the part of respondent Institute and respondent manufacturers of such products, (1) to induce and, pursuant to such agreement, inducing their dealers and customers, or the dealers and customers of any of them, to join or form local associations having for their objective the maintenance of resale prices, or (2) to require and, pursuant to such agreement, requiring their dealers and customers purchasing for resale to maintain resale prices fixed by the manufacturing company respondents, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, The Steel Office Furniture Institute, et al., Docket 3319, February 20, 1940]

§ 3.27 (d) *Combining or conspiring—To enhance, maintain or unify prices.* Agreeing among themselves, in connection with offer, etc., in interstate commerce or in the District of Columbia, of steel vertical filing cabinets, steel horizontal sections and half-sections, and bookcases, steel hi-line and bookshelf units, steel card index cases, steel transfer cases, steel desks and tables, steel storage cabinets and wardrobes, and on the part of respondent Institute and respondent manufacturers of such products, to abide by and not to deviate from prices, discounts, terms and conditions of sale filed by respondent manufacturing companies with respondent Institute, and pursuant to such agreement, abiding by and not deviating from such prices, discounts and terms of sale, or filing prices with the respondent Institute for the purpose or having the effect of fixing and maintaining such prices arrived at by agreement among themselves, or disseminating prices filed with the respondent Institute among said respondents for the purpose of fixing said prices by agreements among themselves, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, The Steel Office Furniture Institute, et al., Docket 3319, February 20, 1940]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 20th day of February, A. D. 1940.

Commissioners: Ewin L. Davis, Chairman; Garland S. Ferguson, Charles H. March, William A. Ayres, Robert E. Freer.

IN THE MATTER OF THE STEEL OFFICE FURNITURE INSTITUTE, AN ASSOCIATION, ITS OFFICERS AND MEMBERS; REMINGTON RAND INC., BROWNE-MORSE COMPANY, COLUMBIA STEEL EQUIPMENT COMPANY, THE GENERAL FIREPROOFING COMPANY, ART METAL CONSTRUCTION COMPANY, BENTSON MANUFACTURING COMPANY, CORRY-JAMESTOWN MANUFACTURING CORPORATION, THE GLOBE-WERNICKE CO., INVINCIBLE METAL FURNITURE COMPANY, METAL OFFICE FURNITURE COMPANY, THE SHAW-WALKER COMPANY, VICTOR SAFE & EQUIPMENT COMPANY, INC., YAWMAN AND ERBE MANUFACTURING COMPANY, CORPORATIONS; TIDEWATER OFFICE EQUIPMENT DEALERS ASSOCIATION, AN ASSOCIATION, ITS OFFICERS AND MEMBERS; NORFOLK STATIONERY COMPANY, INC., HAMPTON ROADS PAPER COMPANY, EMMERSON'S, INC., CORPORATIONS; FRANK B. HODGSON, TRADING AS FRANK B. HODGSON OFFICE FURNITURE, AND GEORGE ANDREW CARNEGIE, TRADING AS CARNEGIE OFFICE APPLIANCE COMPANY

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the amended complaint of the Commission, the separate answers of the respondents,

[1] 4 F.R. 4725.
[2] Modifies list posted stockyards 9 CFR 204.1

[1] 4 F.R. 1573.

and a stipulation dated January 15, 1940, entered into between certain of the respondents herein by their attorneys and W. T. Kelley, Chief Counsel for the Commission, which stipulation has been approved by the Commission, and which provides, among other things, that without other evidence and without intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that certain of said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, The Steel Office Furniture Institute, Remington Rand Inc., Browne-Morse Company, The General Fireproofing Company, Art Metal Construction Company, Bentson Manufacturing Company, Corry-Jamestown Manufacturing Corporation, The Globe-Wernicke Co., Invisible Metal Furniture Company, Metal Office Furniture Company, The Shaw-Walker Company, Victor Safe & Equipment Company, Inc., and Yawman and Erbe Manufacturing Company, their officers, representatives, agents and employees, directly or through any corporate or other device, or through the respondent The Steel Office Furniture Institute, in connection with the offering for sale, sale and distribution of steel vertical filing cabinets; steel horizontal sections and half-sections, and bookcases; steel hiline and bookshelf units; steel card index cases; steel transfer cases; steel desks and tables; steel storage cabinets and wardrobes in interstate commerce or in the District of Columbia, do forthwith cease and desist from doing any of the following acts and things:

1. Agreeing, combining or conspiring among themselves to fix and maintain identical delivered prices, uniform discounts and terms and conditions of sale;

2. Agreeing among themselves to induce and, pursuant to such agreement, inducing their dealers and customers, or the dealers and customers of any of them to join or form local associations having for their objective the maintenance of resale prices;

3. Agreeing among themselves to require and, pursuant to such agreement, requiring their dealers and customers purchasing for resale to maintain resale prices fixed by the manfacturing company respondents;

4. Agreeing among themselves to abide by and not to deviate from prices, discounts, terms and conditions of sale filed by respondent manufacturing companies with respondent Institute, and pursuant to such agreement, abiding by and not deviating from such prices, discounts and terms of sale;

5. Filing prices with the respondent Institute for the purpose or having the effect of fixing and maintaining such prices arrived at by agreement among themselves;

6. Disseminating prices filed with the respondent Institute among said respondents for the purpose of fixing said prices by agreements among themselves.

It is further ordered, That respondents and each of them shall, within sixty (60) days after service upon them of this order, file with the Commission a report or reports in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That this proceeding be and the same hereby is dismissed as to Columbia Steel Equipment Company and Tidewater Office Equipment Dealers' Association and its former respondent members without prejudice to the right of the Commission should the facts so warrant to reopen the same and resume prosecution of the complaint in accordance with its regular procedure insofar as Columbia Steel Equipment Company and Tidewater Office Equipment Dealers' Association and its former respondent members are concerned.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-811; Filed, February 26, 1940; 10:04 a. m.]

TITLE 18—CONSERVATION OF POWER

CHAPTER I—FEDERAL POWER COMMISSION

[Order No. 72-A]

AMENDING THE "PROVISIONAL RULES OF PRACTICE AND REGULATIONS UNDER THE NATURAL GAS ACT, WITH APPROVED FORMS, EFFECTIVE JULY 11, 1938" AS AMENDED BY ORDER NO. 72, ADOPTED JANUARY 3, 1940

FEBRUARY 20, 1940.

Commissioners: Leland Olds, Chairman; Claude L. Draper, Basil Manly, John W. Scott, Clyde L. Seavey.

The Commission, pursuant to authority vested in it by the Natural Gas Act, particularly Section 16 thereof, and finding such action necessary and appropriate for carrying out the provisions of said Act, hereby adopts, promulgates and prescribes the following amendment to the "Provisional Rules of Practice and Regulations Under the Natural Gas Act, effective July 11, 1938," as heretofore prescribed by Order No. 52,[1] adopted July 5, 1938:

Part 54, § 54.3, paragraph C (Changes in filed rates, charges, etc.) subsection (6) thereof, as prescribed in Order No. 72,[2] adopted January 3, 1940, be and it is hereby amended to read as follows:

"(6) If the proposed change is an increase in rates, other than for resale to industrial customers, then 60 days prior to the proposed effective date of the change the additional information listed below shall be submitted:"

The said Order No. 72, adopted January 3, 1940, in all other respects shall remain in full force and effect.

The amendment to the "Provisional Rules of Practice and Regulations Under the Natural Gas Act" adopted, promulgated and prescribed by this order shall become effective on March 1, 1940; and the Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 40-802; Filed, February 24, 1940; 9:29 a. m.]

[1] 3 F.R. 1681.
[2] 5 F.R. 141.

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER II—RAILROAD RETIREMENT BOARD

AMENDMENT TO REGULATIONS UNDER THE RAILROAD RETIREMENT ACT OF 1937

Pursuant to the general authority contained in Section 10 of the Act of June 24, 1937 (Sec. 10, 50 Stat. 314; 45 U.S.C. Sup. III, 228j) §§ 210.02, 210.03, 262.15, and 262.16 (f) of the Regulations of the Railroad Retirement Board under such Act (4 F.R. 1477) are amended by Board Order 40-62, effective February 6, 1940, as follows:

"§ 210.02 *Application to be filed.* No individual, irrespective of his qualifications, shall receive an annuity under the 1935 or 1937 Act unless he has, on or before the date of his death, either (1) filed with the office of the Board, in Washington, D. C., or filed with a Regional Office of the Board a duly executed application, upon such application form as the Board may from time to time provide; or (2) for the purpose of transmission to the Board's Washington office delivered such a duly executed application into the personal custody of a district manager either by delivery to him personally at his office or elsewhere in his district or by delivery at his office to a subordinate field agent designated by him; or (3) for the purpose of transmission to the Board's Washington office delivered such a duly executed application to any field agent of the Board specifically authorized by a Regional Director to receive custody in the district where delivery is made: *Provided, however*, That a claim or application filed with the Social Security Board, whether before or after the adoption of this regulation, for a lump sum payment under Sec. 204 (a) of Title II of the Social Security Act based in whole or in part on service with an employer under the Railroad Retirement Act of 1935 or 1937 which service had not at the time of such filing been determined by the

Board to be service with an employer shall be an application for an annuity filed with the Railroad Retirement Board as of the date on which such claim or application was filed with the Social Security Board.

"§ 210.03 *Filing date.* An application, filed in the manner and form prescribed in Section 210.02, shall be considered filed with the Board as of the date that it is received by the Board in Washington, D. C., or the date that it is received by a Regional Office of the Board, or the date that it is, in accordance with Section 210.02, delivered into the custody of a district manager or other designated field agent, whichever date is earlier.

"§ 262.15 *Offices of the Board.* The main office established by the Board is located in the District of Columbia. The only other offices established by the Board are Regional Offices located at Boston, Massachusetts, New York, New York, Cleveland, Ohio, Chicago, Illinois, Richmond, Virginia, Atlanta, Georgia, Minneapolis, Minnesota, Kansas City, Missouri, Dallas, Texas, Denver, Colorado, Seattle, Washington, and San Francisco, California. (Offices of district managers or of any other field forces are not offices within the meaning of this section.) (Sec. 10, 50 Stat. 314; 45 U.S.C. Sup. III, 228j)

"§ 262.16 (f) No officer, agent, or employee of the Board is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the General Counsel and to no one else. Process issued by the United States District Court for the District of Columbia will be accepted by the General Counsel only when delivered to him in person. Delivery of process issued by any other United States District Court located in a Federal District wherein the Board has established an office (see Section 262.15 of these Regulations as amended) will be accepted at any United States post office located in the State where such District Court is located, if such process with postage prepaid is deposited at such post office for registered mailing in a secure wrapper properly addressed to the General Counsel, Railroad Retirement Board, 10th and You Streets, Northwest, Washington, D. C."

Pursuant to the general authority contained in Section 10 of the Act of June 24, 1937 (Sec. 10, 50 Stat. 314; 45 U.S.C. Sup. III, 228j), the last paragraph of § 250.03 (c) (5) of the Regulations of the Railroad Retirement Board under such Act (4 F.R. 1477) is amended, effective October 1, 1939, by Board Order 40-63 dated February 6, 1940, to read as follows:

"§ 250.03 (c) (5) *Employees of railway labor organization employers.* Employers which are railway labor organization employers as described in Section 202.15 of these Regulations shall show on their reports of monthly compensation of employees, by proper symbol or otherwise, the organization unit to which the report is applicable."

By Authority of the Board.

[SEAL] JOHN C. DAVIDSON, *Secretary.*

FEBRUARY 19, 1940.

[F. R. Doc. 40-810; Filed, February 24, 1940; 12:24 p. m.]

TITLE 26—INTERNAL REVENUE

CHAPTER I—BUREAU OF INTERNAL REVENUE

[Regulations 106]

EMPLOYEES' TAX AND THE EMPLOYERS' TAX UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT

TABLE OF CONTENTS

INTRODUCTORY

SUBPART A

SCOPE OF REGULATIONS

SUBPART B

DEFINITIONS

Introductory

§ 402.1 *Chronological description of pertinent statutes and regulations*—(a) *Title VIII of the Social Security Act and regulations thereunder*—(1) *Statutes.* Title VIII of the Social Security Act, approved August 14, 1935 (49 Stat. 636; 42 U.S.C., Sup. IV, 1001 to 1011, inclusive), imposes an excise tax on employers of one or more employees, and an income tax on employees, measured by wages paid and received after December 31, 1936, with respect to employment after

such date. (Title VIII of the Social Security Act has been superseded as indicated in paragraph (b) (1).)

Section 9 (a) of the Carriers Taxing Act of 1937, approved June 29, 1937 (50 Stat. 439; 45 U.S.C., Sup. IV, 269 (a)), excludes the services of employees and employee representatives, as defined in such Act, from employment with respect to which the taxes under such Title VIII apply.

Section 902 (f) of the Social Security Act Amendments of 1939, approved August 10, 1939 (53 Stat. 1400), provides, in part, that no tax shall be collected under such Title VIII with respect to services performed in the employ of foreign governments and certain of their instrumentalities.

Section 2 of the Act of August 11, 1939 (53 Stat. 1420), provides, in part, that no tax shall be collected under such Title VIII with respect to certain services performed in salvaging timber and clearing debris left by a hurricane.

(2) *Regulations.* Regulations relating to the taxes under Title VIII of the Social Security Act are set forth in:

(A) Treasury Decision 4704, approved November 5, 1936 [Part 401, Subpart G, Title 26, Code of Federal Regulations], as amended, entitled "Identification of Taxpayers under Title VIII of the Social Security Act.—Assignment of Identification Numbers to Employers and Account Numbers to Employees";

(B) Regulations 91, approved November 9, 1936 [Part 401 of such Title 26], as amended, entitled "Regulations 91 Relating to the Employees' Tax and the Employers' Tax under Title VIII of the Social Security Act"; and

(C) Treasury Decision 4739, approved May 24, 1937, making returns under Title VIII of the Social Security Act available to the Social Security Board.

(For amendments to Treasury Decision 4704, see Treasury Decision 4720, approved December 11, 1936. For amendments to Regulations 91, see Treasury Decision 4756, approved July 22, 1937; Treasury Decision 4769, approved October 15, 1937; Treasury Decision 4771, approved October 29, 1937; Treasury Decision 4778, approved November 23, 1937; Treasury Decision 4786, approved December 29, 1937; Treasury Decision 4801, approved April 28, 1938; Treasury Decision 4862, approved September 21, 1938 [Part 401 of such Title 26, 1938 Sup.]; Treasury Decision 4934, approved September 6, 1939 [Part 401 of such Title 26, 1939 Sup.]; and Treasury Decision 4941, approved September 20, 1939 [Part 401 of such Title 26, 1939 Sup.]. Regulations 91 and Treasury Decision 4704, with amendments thereto made by the foregoing Treasury Decisions approved prior to June 2, 1938, are codified in Part 401, Title 26, Code of Federal Regulations. The foregoing Treasury Decisions approved after June 1, 1938, are codified in the supplements to the Code of Federal Regulations, as indicated in connection with each Treasury Decision.)

(b) *Federal Insurance Contributions Act and regulations thereunder*—(1) *Statutes.* Effective April 1, 1939, the provisions of Title VIII of the Social Security Act were reenacted in the Internal Revenue Code, approved February 10, 1939, as subchapter A of chapter 9 thereof (53 Stat. 175). Such subchapter, which supersedes Title VIII of the Social Security Act, may be cited as the "Federal Insurance Contributions Act," under the authority contained in section 1432 of such subchapter, as added by section 607 of the Social Security Act Amendments of 1939 (53 Stat. 1387). The Federal Insurance Contributions Act imposes an excise tax on employers of one or more employees, and an income tax on employees, measured by wages paid and received on and after April 1, 1939, with respect to employment after December 31, 1936; except that, in the case of wages for services performed by individuals after they have attained age 65, such Act (as amended by section 905 of the Social Security Act Amendments of 1939 (53 Stat. 1400)) imposes such taxes with respect to wages paid and received after December 31, 1938, with respect to employment after such date.

Substantial changes in the provisions of the Federal Insurance Contributions Act are effected by amendments thereto contained in sections 601 to 607, inclusive, and 903 to 905, inclusive, of the Social Security Act Amendments of 1939 (53 Stat. 1381, 1400). In addition, the application of the Act is modified by section 902 (f) of the Social Security Act Amendments of 1939 (53 Stat. 1400) and by section 2 of the Act of August 11, 1939 (53 Stat. 1420), in the same manner as such sections 902 (f) and 2 modify the application of Title VIII of the Social Security Act (see paragraph (a) (1)). The applicable provisions of the Federal Insurance Contributions Act, as so amended, and the provisions making such modifications, as well as certain applicable provisions of internal revenue laws of particular importance, have been inserted in the appropriate places in, and are to be read in connection with, these regulations.

(2) *Regulations.* The regulations contained in Treasury Decision 4704, as amended, Regulations 91, as amended, and Treasury Decision 4739 are prescribed under, and made applicable to, the Federal Insurance Contributions Act and other provisions of the Internal Revenue Code, by Treasury Decision 4885, approved February 11, 1939 [Part 465, Subpart B, Title 26, Code of Federal Regulations, 1939 Sup.]. (For amendments to Regulations 91, as so made applicable to the Internal Revenue Code, see Treasury Decision 4934, approved September 6, 1939 [Part 401 of such Title 26, 1939 Sup.]; Treasury Decision 4935, approved September 6, 1939 [Part 401 of such Title 26, 1939 Sup.]; and Treasury Decision 4941, approved September 20, 1939 [Part 401 of such Title 26, 1939 Sup.]. For the extent to which Treasury Decision 4704 and Regulations 91, as so made applicable to the Internal Revenue Code, are superseded by these regulations, see section 402.102. See also section 402.101, relating to the scope of these regulations.) *

SUBPART A—SCOPE OF REGULATIONS

§ 402.101 *Scope of regulations*—(a) *Taxes with respect to wages paid after 1939.* These regulations relate to the employees' tax and employers' tax with respect to wages paid and received on or after January 1, 1940, imposed by the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code), as amended and modified by the Social Security Act Amendments of 1939 and other provisions of law. (See section 402.1 (b) (1) for a chronological description of the pertinent statutes.)

(b) *Additional subjects covered*—(1) *Adjustments, settlements, and claims.* In addition to adjustments, settlements, and claims made in connection with the taxes with respect to wages paid and received on or after January 1, 1940, these regulations also relate to adjustments, settlements, and claims made on or after such date in connection with the taxes under Title VIII of the Social Security Act or under the Federal Insurance Contributions Act in force prior to January 1, 1940, with respect to wages paid and received prior to such date, but not to any adjustment reported in whole or in part on any return (except an adjustment reported by means of a supplemental return) for a tax-return period ended prior to such date.

(2) *Identification of taxpayers.* These regulations also relate to the use after December 31, 1939, of account numbers and identification numbers assigned to employees and employers under Title VIII of the Social Security Act or the Federal Insurance Contributions Act in force before or after the first moment of January 1, 1940, and to applications for and assignment of such numbers under the Federal Insurance Contributions Act in force after December 31, 1939.

(3) *Employment.* In addition to employment in the case of remuneration therefor paid and received on or after January 1, 1940, these regulations also relate to employment performed on or after such date in the case of remuneration therefor paid and received prior to such date.*

§ 402.102 *Extent to which these regulations supersede Regulations 91 and Treasury Decision 4704.* These regula-

*Sections 402.1 to 402.805, inclusive, are issued under the authority contained in section 1429 of the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code), 53 Stat. 178, and are generally preceded by the statutory provisions to which they, respectively, refer.

tions, with respect to the subjects to which they relate, supersede:

(1) Regulations 91, approved November 9, 1936 [Part 401, Title 26, Code of Federal Regulations], as amended, as made applicable to the Federal Insurance Contributions Act and other provisions of the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 [Part 465, Subpart B, of such Title 26, 1939 Sup.], together with any amendments to such regulations as so made applicable to the Internal Revenue Code; and

(2) Treasury Decision 4704, approved November 5, 1936 [Part 401, Subpart G, of such Title 26], as amended, as made applicable to the Federal Insurance Contributions Act and other provisions of the Internal Revenue Code by such Treasury Decision 4885, together with any amendments to such Treasury Decision 4704 as so made applicable to the Internal Revenue Code.*

SUBPART B—DEFINITIONS

SECTION 607 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

FEDERAL INSURANCE CONTRIBUTIONS ACT

Subchapter A of chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 1432. This subchapter may be cited as the 'Federal Insurance Contributions Act'."

SECTION 2 OF THE ACT OF FEBRUARY 10, 1939 (53 STAT. 1)

INTERNAL REVENUE CODE

This act and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as "I.R.C."

SECTION 1426 OF THE ACT

DEFINITIONS

When used in this subchapter—

(a) WAGES. The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400 or (B) of any payment required from an employee under a State unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make.

(b) EMPLOYMENT. The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

(1) Agricultural labor (as defined in subsection (h) of this section);

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;

(6) Service performed in the employ of the United States Government, or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1410 by virtue of any other provision of law;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1410;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(9) Service performed by an individual as an employee or employee representative as defined in section 1532;

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service does not exceed $45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1);

(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition);

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(c) INCLUDED AND EXCLUDED SERVICE. If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employ-

*For statutory authority for these regulations, see note to section 402.1.

ment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (b).

(d) EMPLOYEE. The term "employee" includes an officer of a corporation.

(e) STATE. The term "State" includes Alaska, Hawaii, and the District of Columbia.

(f) PERSON. The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(g) AMERICAN VESSEL. The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(h) AGRICULTURAL LABOR. The term "agricultural labor" includes all services performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. (Sec. 1426, I.R.C., as amended by secs. 606, 905, Social Security Act Amendments of 1939)

SECTION 3797 (A) AND (B) OF THE INTERNAL REVENUE CODE

(a) When used in this title [Internal Revenue Code] * * *

* * * * *

(2) PARTNERSHIP * * *. The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation * * *.

(3) CORPORATION. The term "corporation" includes associations, joint-stock companies, and insurance companies.

* * * * *

(8) SHAREHOLDER. The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) UNITED STATES. The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

* * * * *

(11) SECRETARY. The term "Secretary" means the Secretary of the Treasury.

(12) COMMISSIONER. The term "Commissioner" means the Commissioner of Internal Revenue.

(13) COLLECTOR. The term "collector" means collector of internal revenue.

(14) TAXPAYER. The term "taxpayer" means any person subject to a tax imposed by this title.

* * * * *

(b) INCLUDES AND INCLUDING. The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

§ 402.201 *General definitions and use of terms.* As used hereinafter in these regulations—

(a) The terms defined in the above provisions of law shall have the meanings so assigned to them.

(b) *Social Security Act* means the Act approved August 14, 1935 (49 Stat. 620).

(c) *Internal Revenue Code* means the Act approved February 10, 1939 (53 Stat., Part 1), entitled "An Act To consolidate and codify the internal revenue laws of the United States," as amended.

(d) *Social Security Act Amendments of 1939* means the Act approved August 10, 1939 (53 Stat. 1360).

(e) *Federal Insurance Contributions Act* means subchapter A of chapter 9 of the Internal Revenue Code, as amended.

(f) *Act* means the Federal Insurance Contributions Act, as defined in this section.

(g) *Regulations 91* means the regulations approved November 9, 1936 [Part 401, Title 26, Code of Federal Regulations], as amended, relating to the employees' tax and the employers' tax under Title VIII of the Social Security Act, and such regulations, as made applicable to subchapter A of chapter 9 and other provisions of the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 [Part 465, Subpart B, of such Title 26, 1939 Sup.], together with any amendments to such regulations as so made applicable to the Internal Revenue Code.

(h) *Person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(i) *Tax* means the employees' tax or the employers' tax as respectively defined in this section, or both.

(j) *Employees' tax* means the tax imposed by section 1400 of the Act, except that such term when used in subpart G includes also the tax imposed by section 1400 of the Federal Insurance Contributions Act in force prior to August 10, 1939, and the tax imposed by section 801 of the Social Security Act.

(k) *Employers' tax* means the tax imposed by section 1410 of the Act, except that such term when used in subpart G includes also the tax imposed by section 1410 of the Federal Insurance Contributions Act in force prior to August 10, 1939, and the tax imposed by section 804 of the Social Security Act.

(l) *Identification number* means the identifying number of an employer assigned, as the case may be, under the Act, or the Federal Insurance Contributions Act in force prior to August 10, 1939, or Title VIII of the Social Security Act.

(m) *Account number* means the identifying number of an employee assigned, as the case may be, under the Act, or the Federal Insurance Contributions Act in force prior to August 10, 1939, or Title VIII of the Social Security Act.

(n) *Social Security Board* means the board established pursuant to Title VII of the Social Security Act.

(o) The cross references in these regulations to other portions of the regulations, when the word "see" is used, are made only for convenience, and shall be given no legal effect.*

SECTION 1426 (B) OF THE ACT

The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date * * *

* * * * *

(Sec. 1426 (b), I.R.C., as amended by secs. 606, 905, Social Security Act Amendments of 1939)

SECTION 1426 (B) OF THE FEDERAL INSURANCE CONTRIBUTIONS ACT, AS ENACTED FEBRUARY 10, 1939

The term "employment" means any service of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual who has attained the age of sixty-five;

(5) Service performed as an officer or member of the crew of a vessel documented under

the laws of the United States or of any foreign country;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(9) Service performed by an individual as an employee as defined in section 1532 (b); or

(10) Service performed as an employee representative as defined in section 1532 (c).

SECTION 905 (A) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

No service performed at any time during the calendar year 1939 by any individual shall, by reason of the individual having attained the age of sixty-five, be excepted from employment as defined in section 1426 (b) of subchapter A of chapter 9 of the Internal Revenue Code. Paragraph (4) of such section (which excepts such service from employment) is repealed as of the effective date thereof, and paragraph (4) of section 811 (b) of the Social Security Act is repealed as of January 1, 1939. The tax on employees imposed by section 1400 of such subchapter and the tax on employers imposed by section 1410 of such subchapter, and the provisions of law applicable to such taxes, shall apply with respect to remuneration paid after December 31, 1938, for service which, by reason of the enactment of this section, constitutes employment as so defined.

SECTION 902 (F) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

No tax shall be collected * * * under the Federal Insurance Contributions Act * * * with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of sections 1426 (b) * * * of the Internal Revenue Code, as amended * * *

SECTION 2 OF THE ACT OF AUGUST 11, 1939 (53 STAT. 1420)

No tax shall be collected * * * under the Federal Insurance Contributions Act * * * with respect to services rendered prior to January 1, 1940, in the employ of the owner or tenant of land, in salvaging timber on such land or clearing such land of brush and other debris left by a hurricane * * *

§ 402.202 *Employment prior to January 1, 1940.* Under the provisions of section 1426 (b) of the Federal Insurance Contributions Act, as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939, services performed prior to January 1, 1940, constitute employment if they were employment as defined in section 1426 (b) prior to such date. Thus, services performed prior to January 1, 1940, within the United States by an employee for the person employing him, constitute employment within the meaning of the Federal Insurance Contributions Act in force on and after such date, unless the services are excepted by section 1426 (b) of the Federal Insurance Contributions Act in force prior to such date. The services so excepted are the services excepted by the section (as originally enacted February 10, 1939), as amended by section 905 (a) of the Social Security Act Amendments of 1939. Such section 905 (a) repealed, with respect only to services performed on or after January 1, 1939, the exception of services performed by an individual after his attainment of age 65.

The collection of tax under the Act with respect to certain services is prohibited although such services are not excepted by section 1426 (b) of the Federal Insurance Contributions Act in force prior to January 1, 1940. Section 902 (f) of the Social Security Act Amendments of 1939 provides that no tax shall be collected under the Act with respect to services rendered prior to January 1, 1940, which are described in paragraph (11), relating to services in the employ of foreign governments, and in paragraph (12), relating to services in the employ of certain instrumentalities of foreign governments, of section 1426 (b) of the Federal Insurance Contributions Act in force on and after January 1, 1940; and section 2 of the Act of August 11, 1939 (53 Stat. 1420), provides that no tax shall be collected under the Federal Insurance Contributions Act with respect to services rendered prior to January 1, 1940, in the employ of the owner or tenant of land, in salvaging timber on such land, or clearing such land of brush and other debris, left by a hurricane. Notwithstanding the provisions of section 402.201 (a), the term "employment," as used in these regulations, shall not be deemed to include services with respect to which the collection of tax is prohibited by such section 902 (f) or such section 2.

The taxes to which these regulations relate apply with respect to remuneration paid on or after January 1, 1940, for services performed prior to such date, to the extent that the remuneration and services constitute wages and employment. (See sections 402.227 and 402.228, relating to wages)

Whether services performed prior to January 1, 1940, constitute employment within the meaning of these regulations shall be determined in accordance with the applicable provisions of Regulations 91.*

SECTION 1426 (B) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

* * * * * * *

(Sec. 1426 (b), I.R.C., as amended by secs. 606, 905, Social Security Act Amendments of 1939)

SECTION 1426 (G) OF THE ACT

The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State. (Sec. 1426 (g), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939)

§ 402.203 *Employment after December 31, 1939.*—(a) *In general.* Whether services performed on or after January 1, 1940, constitute employment is determined under section 1426 (b) of the Act, that is, section 1426 (b), as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939. This section of these regulations, and sections 402.204 and 402.205 (relating to who are employees and employers), section 402.206 (relating to excepted services in general), section 402.207 (relating to included and excluded services), and sections 402.208 to 402.226, inclusive (relating to the several classes of excepted services), apply with respect only to services performed on or after January 1, 1940. (For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see section 402.207. For provisions relating to services performed prior to January 1, 1940, see section 402.202.)

(b) *Services performed within the United States.* Services performed on or after January 1, 1940, within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 1426 (b) of the Act, constitute employment within the meaning of the Act. Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii (except certain services performed on or in connection with an American vessel—see paragraph (c)), do not constitute employment.

With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employment within the meaning of the Act.

(c) *Services performed outside the United States.* Services performed on or after January 1, 1940, by an employee for the person employing him "on or in connection with" an American vessel outside the United States constitute employment provided:

(1) The employee is also employed "on and in connection with" such vessel when outside the United States; and

(2) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of which the vessel touches at a port within the United States; and

(3) The services are not excepted under section 1426 (b) of the Act. (See particularly section 402.225 of these regulations, relating to fishing.)

An employee performs services on *and* in connection with the vessel if he performs services on the vessel which are also in connection with the vessel. Services performed *on* the vessel as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

If services are performed by an employee "on and in connection with" an American vessel when outside the United States and conditions (2) and (3) above are met, then the services of that employee performed on *or* in connection with the vessel constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel.)

Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which the vessel does not touch at a port within the United States, do not constitute employment, notwithstanding similar services performed by others on or in connection with the vessel may constitute employment.

The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii).

With respect to services performed outside the United States, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether a vessel is an American vessel.*

§ 402.204 *Who are employees.* Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.

Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to *what* shall be done but *how* it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee.

Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

No distinction is made between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees. An officer of a corporation is an employee of the corporation but a director as such is not. A director may be an employee of the corporation, however, if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the Act. (See section 402.203)*

§ 402.205 *Who are employers.* Every person is an employer if he employs one or more employees. Neither the number of employees employed nor the period during which any such employee is employed is material.

An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

Although a person may be an employer under this section, services performed in his employ may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the Act. (See section 402.203)*

SECTION 1426 (B) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

* * * * *

(Sec. 1426 (b), I.R.C., as amended by secs. 606, 905, Social Security Act Amendments of 1939).

§ 402.206 *Excepted services in general.* Services performed on or after January 1, 1940, by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted by any of the numbered paragraphs of section 1426 (b) of the Act, that is, section 1426 (b), as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939. Such services do not constitute employment for purposes of the tax even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel.

The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

Example. A is an individual who is employed part time by B to perform services which constitute "agricultural

labor." (See section 402.208) A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While no tax liability is incurred with respect to A's remuneration for services performed in the employ of B (the services being excepted as agricultural labor), the exception does not embrace the services performed by A in the employ of C which constitute employment and the tax attaches with respect to the wages (see section 402.227) for such services.

This section, and the sections which follow it relating to included and excluded services and the several classes of excepted services, apply with respect only to services performed on or after January 1, 1940. (See section 402.203 (a).) (For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see section 402.207. For provisions relating to services performed prior to January 1, 1940, see section 402.202.) *

SECTION 1426 (C) OF THE ACT

If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (b). (Sec. 1426 (c), I. R. C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.207 *Included and excluded services.* If a portion of the services performed by an employee for the person employing him during a pay period constitutes employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 1426 (b) of the Act constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

If one-half or more of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

If less than one-half of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

Example 1. Employee A is employed by B who operates a farm and a store. A's services on the farm are such that they are excepted as agricultural labor and do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment.

During another month A works 75 hours on the farm and 120 hours in the store. All of A's services during the month are deemed to be employment, since one-half or more of his services during the month constitutes employment.

Example 2. Employee C is employed as a maid by D, a medical doctor, whose home and office are located in the same building. C's services in the home are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. She is paid each week. During a particular week C works 20 hours in the home and 20 hours in the office. All of C's services during that week are deemed to be employment, since one-half or more of her services during the week constitutes employment.

During another week C works 22 hours in the home and 15 hours in the office. None of C's services during that week are deemed to be employment, since less than one-half of her services during the week constitutes employment.

For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. Thus, if the periods for which payments of remuneration are made to the employee by such person are of uniform duration, each such period constitutes a "pay period." If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is *ordinarily* made to the employee by such person, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if a person ordinarily pays a particular employee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the "pay period" is still the calendar week; or if, instead, that employee is sent on a trip by such person and receives at the end of the third week a single remuneration payment for three weeks' services, the "pay period" is still the calendar week.

If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the person employing him, such period is deemed to be a "pay period" for purposes of this section.

The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the person employing him if the periods for which such person makes payments of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee," or (2) with respect to any services performed by the employee for the person employing him if the period for which a payment of remuneration is ordinarily made to the employee by such person exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the person employing him during a pay period if any of such service is excepted by section 1426 (b) (9) of the Act. (See section 402.216 of these regulations.)

If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed herein are not applicable, the tax attaches with respect to such services as constitute employment as defined in section 1426 (b) of the Act.*

SECTION 1426 (B) (1) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(1) Agricultural labor (as defined in subsection (h) of this section); (Sec. 1426 (b) (1), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

SECTION 1426 (H) OF THE ACT

The term "agricultural labor" includes all services performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deeemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. (Sec. 1426 (h), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)

SECTION 15 (G) OF THE AGRICULTURAL MARKETING ACT, AS AMENDED

As used in this Act, the term "agricultural commodity" includes * * * crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923. (Sec. 15 (g), Act of June 15, 1929, 46 Stat. 18, as added by sec. 3, Act of Mar. 4, 1931, 46 Stat. 1550, 12 U.S.C. 1141j (g).)

SECTION 2 (C) AND (H) OF THE NAVAL STORES ACT

* * * * *

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine. (Sec. 2 (c), (h), Act of Mar. 3, 1923, 42 Stat. 1435, 7 U.S.C. 92 (c), (h).)

§ 402.208 *Agricultural labor*—(a) *In general.* Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 1426 (h) of the Act are excepted. The term as so defined includes services of the character described in paragraphs (b), (c), (d), and (e) of this section.

In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(b) *Services described in section 1426 (h) (1) of the act.* Services performed on a farm by an employee of any person in connection with any of the following activities are excepted as agricultural labor:

(1) The cultivation of the soil;

(2) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(3) The raising or harvesting of any other agricultural or horticultural commodity.

The term "farm" as used in this and succeeding paragraphs of this section includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets), do not constitute "farms."

(c) *Services described in section 1426 (h) (2) of the act.* The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms are excepted as agricultural labor, provided the major part of such services is performed on a farm:

(1) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(2) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

The services described in (1) above may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) *Services described in section 1426 (h) (3) of the act.* Services performed by an employee in the employ of any person in connection with any of the following operations are excepted as agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The hatching of poultry;

(3) The raising or harvesting of mushrooms;

(4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;

(5) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(6) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 1426 (h) (4) of the act.* (1) Services performed by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subparagraph (2), below), produced by such farmer or farmer-members of such organization or group of farmers are excepted, provided such services are performed as an incident to ordinary farming operations.

Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations."

(2) Services performed by an employee in the employ of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, are excepted as agricultural labor, provided such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in the sorting, grading, or storing of fruits, or in the cleaning of beans, are performed as an incident to their preparation for market, such services may be excepted whether performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(3) The services described in subparagraphs (1) and (2), above, do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the excepted services described in such subparagraphs must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such

activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (c) of this section.*

SECTION 1426 (B) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. (Sec. 1426 (b) (2), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939)

§ 402.209 *Domestic service.* Services of a household nature performed by an employee in or about the private home of the person by whom he is employed, or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which he is employed, are included within the above exception.

A private home is the fixed place of abode of an individual or family.

A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter.

If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home and the services performed therein are not excepted. Likewise, if the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for such purpose, the services performed therein are not within the exception.

In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen, gardners, footmen, grooms, and chauffeurs of automobiles for family use. In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, maids, butlers, laundresses, furnacemen, waiters, and housemothers.

The services above enumerated are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, or commercial offices or establishments.

Services performed as a private secretary, even though performed in the employer's home, are not within the exception.*

SECTION 1426 (B) (3) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(3) Casual labor not in the course of the employer's trade or business. (Sec. 1426 (b) (3), I. R. C., as amended by sec. 606, Social Security Act Amendments of 1939)

§ 402.210 *Casual labor not in the course of employer's trade or business.* The term "casual labor" includes labor which is occasional, incidental, or irregular.

The expression "not in the course of the employer's trade or business" includes labor that does not promote or advance the trade or business of the employer.

Thus, labor which is occasional, incidental, or irregular, *and* does not promote or advance the employer's trade or business, is excepted.

Example 1. A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of two days in completing the work. Since B's labor is casual and is not in the course of A's trade or business, such services are excepted.

Casual labor, that is, labor which is occasional, incidental, or irregular, but which *is* in the course of the employer's trade or business, does not come within the above exception.

Example 2. C's business is that of operating a sawmill. He employs D for two hours, at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and is not excepted.

Example 3. E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be casual, they are in the course of the employer's trade or business and, therefore, not excepted.

Casual labor performed for a corporation does not come within this exception.*

SECTION 1426 (B) (4) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother. (Sec. 1426 (b) (4), I.R.C., as amended by secs. 606, 905, Social Security Act Amendments of 1939)

§ 402.211 *Family employment.* Certain services are excepted because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

Under (1) and (2), above, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under (3), in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

Services performed in the employ of a person other than an individual (such as a corporation or a partnership) are not within the exception.*

SECTION 1426 (B) (5) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(5) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States. (Sec. 1426 (b) (5), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939)

§ 402.212 *Vessel not an American vessel.* Certain services performed within the United States "on or in connection with" a vessel not an American vessel are excepted. In order to be excepted, the services must be performed by an employee who is also employed "on and in connection with" the vessel when outside the United States.

An employee performs services on *and* in connection with the vessel if he performs services on the vessel when outside the United States which are also in connection with the vessel. Services performed *on* the vessel outside the United States as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel. (For definitions of "vessel" and "American vessel," see section 402.203 (c))

Since the only services performed outside the United States which constitute employment are those described in section 402.203 (c) (relating to services performed outside the United States on or in connection with an American vessel),

services performed outside the United States on or in connection with a vessel not an American vessel in any event do not constitute employment.*

SECTION 1426 (B) (6) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(6) Service performed in the employ of the United States Government, or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1410 by virtue of any other provision of law. (Sec. 1426 (b) (6), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939)

§ 402.213 *United States and instrumentalities thereof.* Services performed in the employ of the United States Government are excepted. Services performed in the employ of an instrumentality of the United States are also excepted if the instrumentality is either wholly owned by the United States, or exempt from the employers' tax by virtue of any other provision of law.

Services performed in the employ of an instrumentality of the United States which is neither wholly owned by the United States nor exempt from the employers' tax by virtue of any other provision of law are not within the exception.

Services performed in the employ of a national bank or a State member bank of the Federal Reserve System, for example, are not within the exception.*

SECTION 1426 (B) (7) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1410. (Sec. 1426 (b) (7), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939)

§ 402.214 *States and their political subdivisions and instrumentalities.* Services performed in the employ of any State, or of any political subdivision thereof, are excepted. Services performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted if the instrumentality is wholly owned by one or more of the foregoing. Services performed in the employ of an instrumentality of one or more of the several States or political subdivisions thereof which is not wholly owned by one or more of the foregoing are excepted only to the extent that the instrumentality is with respect to such services immune under the Constitution of the United States from the employers' tax.

The term "State" includes the District of Columbia and the Territories of Alaska and Hawaii.*

SECTION 1426 (B) (8) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. (Sec. 1426 (b) (8), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939)

§ 402.215 *Religious, charitable, scientific, literary, and educational organizations and community chests.* Services performed by an employee in the employ of an organization of the class specified in section 1426 (b) (8) of the Act are excepted.

For purposes of this exception the nature of the services performed is immaterial; the statutory test is the character of the organization for which the services are performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet the following three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes;

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(3) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

Corporations or other institutions organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that an organization established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily affect its status under the law.

An educational organization within the meaning of section 1426 (b) (8) of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda is not an educational organization. However, the publication of books or the giving of lectures advocating a cause of a controversial nature shall not of itself be sufficient to deny an organization the exemption, if carrying on propaganda, or otherwise attempting, to influence legislation form no substantial part of its activities, its principal purpose and substantially all of its activities being clearly of a nonpartisan, noncontroversial, and educational nature.

Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and which also manufactures and sells articles to the public for profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends, and interest from investments, provided such income is devoted exclusively to one or more of the specified purposes.

If an organization has established its status under section 1426 (b) (8) of the Act, it need not thereafter make a return or any further showing with respect to its status under the Act unless it changes the character of its organization or operations or the purpose for which it was originally created.*

SECTION 1426 (B) (9) OF THE ACT

The term "employment" means * * * any service of whatever nature performed after December 31, 1939, by an employee for the person employing him * * * except—

(9) Service performed by an individual as an employee or employee representative as defined in section 1532. (Sec. 1426 (b) (9), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939)

SECTION 1532 OF THE INTERNAL REVENUE CODE

As used in this subchapter [subchapter B, chapter 9, Internal Revenue Code]—

(a) EMPLOYER. The term "employer" means any carrier (as defined in subsection (h) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls

within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and by laws of such organizations.

(b) EMPLOYEE. The term "employee" means any person in the service of one or more employers for compensation: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual is in the employment relation to a carrier if he is on furlough, subject to call for service within or outside the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability; all in accordance with the established rules and practices in effect on the carrier: *Provided further,* That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier not conducting the principal part of its business in the United States unless during the last payroll period in which he rendered service to it prior to said date, he rendered service to it in the United States.

The term "employee" includes an officer of an employer.

(c) EMPLOYEE REPRESENTATIVE. The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, 44 Stat. 577 (U.S.C., Title 45, c. 18), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) SERVICE. An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States.

(e) COMPENSATION. The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500. Compensation which is earned during the period for which the Commissioner shall require a return of taxes under this subchapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only.

(f) UNITED STATES. The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(g) COMPANY. The term "company" includes corporations, associations, and joint-stock companies.

(h) CARRIER. The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

* * * * *

§ 402.216 *Railroad industry — employees and employee representatives under section 1532 of the Internal Revenue Code.* Services performed by an individual as an "employee" or as an "employee representative," as those terms are defined in section 1532 of subchapter B of chapter 9 of the Internal Revenue Code (which subchapter corresponds to and, effective April 1, 1939, superseded the Carriers Taxing Act of 1937), are excepted. (For definitions of employee and employee representative, see such section and the regulations issued pursuant to such subchapter B.) *

SECTION 1426 (B) (10) (A) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service does not exceed $45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university; (Sec. 1426 (b) (10) (A), I.R.C., as amended by Sec. 606, Social Security Act Amendments of 1939.)

SECTION 101 OF THE INTERNAL REVENUE CODE

The following organizations shall be exempt from taxation under this chapter—

(1) Labor * * * organizations;

(2) Mutual savings banks not having a capital stock represented by shares;

(3) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(4) Domestic building and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

(5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

* * * * *

(7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(10) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 per centum or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses;

(11) Farmers' or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses;

(12) Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph;

(13) Corporations organized by an association exempt under the provisions of paragraph (12), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because

there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose;

(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;

(15) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes;

* * * * *

(17) Teachers' retirement fund associations of a purely local character, if (A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and (B) the income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members, and income in respect of investments;

(18) Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

* * * * *

(Sec. 101, I.R.C., as amended by sec. 217, Revenue Act of 1939)

§ 402.217 *Organizations exempt from income tax*—(a) *In general.* This section deals with the exception of services performed in the employ of certain organizations exempt from income tax under section 101 of the Internal Revenue Code. If the services meet the tests set forth in paragraph (b), (c), or (d), such services are excepted.

(See also section 402.215 for provisions relating to the exception of services performed in the employ of religious, charitable, scientific, literary, and educational organizations and community chests of the type described in section 101 (6) of the Internal Revenue Code; section 402.218 for provisions relating to the exception of services performed in the employ of agricultural and horticultural organizations exempt from income tax under section 101 (1) of the Code; section 402.219 for provisions relating to the exception of services performed in the employ of voluntary employees' beneficiary associations of the type described in section 101 (16) of the Code; and section 402.220 for provisions relating to the exception of services performed in the employ of Federal employees' beneficiary associations of the type described in section 101 (19) of the Code.)

(b) *Remuneration not in excess of $45 for calendar quarter.* Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code are excepted, if the remuneration for the services does not exceed $45. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example 1. X is a local lodge of a fraternal organization and is exempt from income tax under section 101 (3) of the Internal Revenue Code. X has two paid employees, A, who serves exclusively as recording secretary for the lodge, and B, who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1940 (that is, January 1, 1940, through March 31, 1940, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter *does not* exceed $45, all of such services are excepted, and the tax does not attach with respect to any of the remuneration for such services. Since the remuneration for the services performed by B during such quarter, however, *does* exceed $45, none of such services are excepted, and the tax attaches with respect to *all* of the remuneration for such services (that is, $180) as and when paid.

Example 2. The facts are the same as in example 1, above, except that on April 1, 1940, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1940, through June 30, 1940, both dates inclusive), A earns a total of $60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services exceeds $45. The tax attaches with respect to *all* of the remuneration for services performed during the second quarter (that is, $60) as and when paid.

Example 3. The facts are the same as in example 1, above, except that A earns $120 for services performed during the year 1940, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter does not exceed $45. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year does exceed $45, the services during that quarter are not excepted, and the tax attaches with respect to that portion of the remuneration attributable to his services in that quarter.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 101 of the Internal Revenue Code are excepted:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed by organizations exempt from income tax.* Services performed in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where such services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(For provisions relating to services performed by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see section 402.221.) *

SECTION 1426 (B) (10) (B) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(10) (B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1); (Sec. 1426 (b) (10) (B), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

SECTION 101 (1) OF THE INTERNAL REVENUE CODE

The following organizations shall be exempt from taxation under this chapter—

(1) * * * agricultural, or horticultural organizations;

§ 402.218 *Agricultural and horticultural organizations exempt from income tax.* Services performed by an employee in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Internal Revenue Code are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

SECTION 1426 (B) (10) (C) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(10) (C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses; (Sec. 1426 (b) (10) (C), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.219 *Voluntary employees' beneficiary associations.* Services performed by an employee in the employ of an organization of the character described in section 1426 (b) (10) (C) of the Act are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

SECTION 1426 (B) (10) (D) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(10) (D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual; (Sec. 1426 (b) (10) (D), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.220 *Federal employees' beneficiary associations.*—Services performed by an employee in the employ of an organization of the character described in section 1426 (b) (10) (D) are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

SECTION 1426 (B) (10) (E) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(10) (E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition); (Sec. 1426 (b) (10) (E), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

§ 402.221 *Students employed by schools, colleges, or universities not exempt from income tax.* Services performed in a calendar quarter by a student in the employ of a school, college, or university not exempt from income tax under section 101 of the Internal Revenue Code are excepted, provided:

(1) The services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university; and

(2) The remuneration for such services performed in such calendar quarter does not exceed $45, exclusive of room, board, and tuition furnished by the school, college, or university.

A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31.

For purposes of this exception, the type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the amount of remuneration for services performed by the employee in the calendar quarter, and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in whose employ he performs the services.

The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or general accepted sense.

(For provisions relating to services performed by a student in the employ of an organization exempt from income tax, see section 402.217 (d).)*

SECTION 1426 (B) (11) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative): (Sec. 1426 (b) (11), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)

§ 402.222 *Foreign governments.* Services performed by an employee in the employ of a foreign government are excepted. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.*

SECTION 1426 (B) (12) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality there; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof; (Sec. 1426 (b) (12), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)

§ 402.223 *Wholly owned instrumentalities of a foreign government.* Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, provided:

(1) The instrumentality is wholly owned by the foreign government;

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial.*

SECTION 1426 (B) (13) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed

a four years' course in a medical school chartered or approved pursuant to State law; (Sec. 1426 (b) (13), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)

§ 402.224 Student nurses and hospital internes. Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted provided the student nurse is enrolled and regularly attending classes in a nurses' training school, and such nurses' training school is chartered or approved pursuant to State law.

Services performed as an interne (as distinguished from a resident doctor) in the employ of a hospital are excepted provided the interne has completed a four years' course in a medical school chartered or approved pursuant to State law.*

SECTION 1426 (B) (14) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(14) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or (Sec. 1426 (b) (14), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)

§ 402.225 *Fishing*—(a) *In general.* Subject to the limitations prescribed in paragraphs (b) and (c), the services described in this paragraph are excepted. Services performed by an individual in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish (for example, oysters, clams, and mussels), crustacea (for example, lobsters, crabs, and shrimps), sponges, seaweeds, or other aquatic forms of animal and vegetable life are excepted. The exception extends to services performed as an officer or member of the crew of a vessel while the vessel is engaged in any such activity whether or not the officer or member of the crew is himself so engaged. In the case of an individual who is engaged in any such activity in the employ of any person, the services performed, by such individual in the employ of such person, as an ordinary incident to any such activity are also excepted. Similarly, for example, the shore services of an officer or member of the crew of a vessel engaged in any such activity are excepted if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to any such activity may include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

(b) *Salmon and halibut fishing.* Services performed in connection with the catching or taking of salmon or halibut, for commercial purposes, are not within the exception. Thus, neither the services of an officer or member of the crew of a vessel (irrespective of its tonnage) which is engaged in the catching or taking of salmon or halibut, for commercial purposes, nor the services of any other individual in connection with such activity, are within the exception.

(c) *Vessels of more than 10 net tons.* Services described in paragraph (a) performed on or in connection with a vessel of more than 10 net tons are not within the exception. For purposes of the exception, the tonnage of the vessel shall be determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.*

SECTION 1426 (B) (15) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him * * * except—

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution. (Sec. 1426 (b) (15), I.R.C., as added by sec. 606, Social Security Act Amendments of 1939.)

§ 402.226 *Delivery and distribution of newspapers and shopping news.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, are excepted. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted.

The exception continues only during the time that the employee is under the age of 18.*

SECTION 1426 (A) OF THE ACT

The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400 or (B) of any payment required from an employee under a State unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make. (Sec. 1426 (a), I.R.C., as amended by sec. 606, Social Security Act Amendments of 1939.)

SECTION 1427 OF THE ACT

Whenever under this subchapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this subchapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

§ 402.227 *Wages*—(a) *In general.* Whether remuneration paid on or after January 1, 1940, for employment performed after December 31, 1936, constitutes wages is determined under section 1426 (a) of the Act, that is, section 1426 (a), as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939. This section of these regulations and section 402.228 (relating to exclusions from wages) apply with respect only to remuneration paid on or after January 1, 1940, for employment performed after December 31, 1936. Whether remuneration paid prior to January 1, 1940, for employment performed after December 31, 1936, constitutes wages shall be determined in accordance with the applicable provisions of Regulations 91.

The term "wages" means all remuneration for employment unless specifically excepted under section 1426 (a) of the Act. (See section 402.228)

The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions on sales or on insurance premiums, are wages within the meaning of the Act if paid as compensation for employment.

The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

The medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment.

Ordinarily, facilities or privileges (such as entertainment, medical services, or

so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges," however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

Remuneration for employment, unless such remuneration is specifically excepted under section 1426 (a), constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

Example. A is employed by B during the month of January 1940 in employment and is entitled to receive remuneration of $100 for the services performed for B, the employer, during the month. A leaves the employ of B at the close of business on January 31, 1940. On February 15, 1940 (when A is no longer an employee of B), B pays A the remuneration of $100 which was earned for the services performed in January. The $100 is wages within the meaning of the Act, and the tax is payable with respect thereto.

(b) *Certain items included as wages*—(1) *Vacation allowances.* Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(2) *Traveling expenses.* Amounts paid to traveling salesmen or other employees as allowance or reimbursement for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer. Thus, the wages of a salesman, who is employed on a straight salary basis with an allowance to cover all necessary expenses incurred in the employer's business, are computed by adding to the salary the amount of the excess, if any, of the expense allowance over the expenses actually incurred and accounted for by the employee to the employer.

(3) *Deductions by an employer from wages of an employee.* The amount of any tax which is required by section 1401 (a) of the Act to be deducted by the employer from the wages of an employee is considered to be a part of the employee's wages, and is deemed to be paid to the employee as wages at the time that the deduction is made. Other amounts deducted from the wages of an employee by an employer also constitute wages paid to the employee at the time of the deduction. It is immaterial that the Act, or any Act of Congress, or the law of any State, requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.*

§ 402.228 *Exclusions from wages*—(a) *$3,000 limitation.* The term "wages" does not include that part of the remuneration paid by an employer to an employee for employment performed for him during any calendar year which exceeds the first $3,000 paid by such employer to such employee for employment performed during such calendar year.

The $3,000 limitation applies only if the remuneration received by an employee from the same employer for employment during any one calendar year exceeds $3,000. The limitation relates to remuneration for employment during any one calendar year and not to the amount of remuneration (irrespective of the year of employment) which is paid or received in any one calendar year.

Example 1. Employee A, in 1940, receives $2,500 from employer B on account of $3,000 due him for employment performed in 1940. In 1941 A receives from employer B the balance of $500 due him for employment performed in the prior year (1940) and also $3,000 for employment performed in 1941. Although A actually receives total remuneration of $3,500 during the calendar year 1941, that entire amount is subject to tax, that is, $3,000 with respect to employment during 1941 and $500 with respect to employment during 1940 (this $500 added to the $2,500 paid in 1940 constitutes the maximum wages which could be received from any one employer by A with respect to employment during the calender year 1940).

If the employee has more than one employer during a calendar year, the limitation of wages to the first $3,000 of remuneration received applies, not to the aggregate remuneration received from all employers with respect to employment during that year, but instead to the remuneration received from *each* employer with respect to employment during that year. In such case the first $3,000 received from each employer constitutes wages and is subject to the tax, even though, under section 1401 (d) of the Act, the employee may be entitled to a refund of any amount of employees' tax deducted from his wages and paid to the collector which exceeds the employees' tax with respect to the first $3,000 of wages received for services performed during such year. (In this connection and in connection with the two examples immediately following, see section 402.705, relating to special refunds of employees' tax on wages over $3,000.)

Example 2. Employee C receives from employer D a salary of $600 a month for employment by D during the first seven months of 1940, or total remuneration of $4,200. At the end of the fifth month C has received $3,000 from employer D, and only that part of his total remuneration from D constitutes wages subject to the tax. The $600 received by employee C from employer D for employment during the sixth month, and the like amount received for employment during the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. C receives remuneration of $600 a month from employer E for the remaining five months of 1940, or total remuneration of $3,000 from employer E. The entire $3,000 received by C from employer E constitutes wages and is subject to the tax. Thus, the first $3,000 received from employer D and the entire $3,000 received from employer E constitute wages.

Example 3. F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation during the calendar year 1940 and receives a salary of $3,000 from each corporation. Each $3,000 received by F from each of the corporations X, Y, and Z (whether or not such corporations are related) constitutes wages and is subject to the tax.

(b) *Employers' plans providing for payments on account of retirement, sickness or accident disability, medical and hospitalization expenses, or death.* Under section 1426 (a) (2) of the Act, the term "wages" does not include the amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(1) retirement,

(2) sickness or accident disability,

(3) medical and hospitalization expenses in connection with sickness or accident disability, or

(4) death, provided the employee (i) has not the option to receive, instead of provisions for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer.

The plan or system established by an employer need not provide for payments

on account of all of the specified items, but such plan or system may provide for any one or more of such items.

It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

(c) *Payment by an employer of employees' tax or employees' contributions under a State law.* The term "wages" does not include the amount of any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (1) the employees' tax imposed by section 1400 of the Act, or (2) any payment required from an employee under a State unemployment compensation law.

(d) *Dismissal payments.* Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, are excluded from "wages," provided the employer is not legally bound by contract, statute, or otherwise, to make such payments.

(e) *Miscellaneous.* In addition to the exclusions specified in paragraphs (a), (b), (c), and (d), the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 1426 (b) of the Act.

(2) Remuneration for services which are not deemed to be employment under section 1426 (c) of the Act.

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.*

SUBPART C—EMPLOYEES' TAX

SECTION 1400 OF THE ACT

In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 1426 (a)) received by him after December 31, 1936, with respect to employment (as defined in section 1426 (b)) after such date:

(1) With respect to wages received during the calendar years 1939, 1940, 1941, and 1942, the rate shall be 1 per centum.

(2) With respect to wages received during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(3) With respect to wages received during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(4) With respect to wages received after December 31, 1948, the rate shall be 3 per centum. (Sec. 1400, I.R.C., as amended by sec. 601, Social Security Act Amendments of 1939.)

§ 402.301 *Measure of employees' tax.* The employees' tax is measured by the amount of wages actually or constructively received on or after January 1, 1940, with respect to employment on or after January 1, 1937. (See sections 402.202 and 402.203, relating to employment, and sections 402.227 and 402.228, relating to wages) *

§ 402.302 *Rates and computation of employees' tax.* The rates of employees' tax applicable for the respective calendar years are as follows:

	Percent
For the calendar years 1940, 1941, and 1942	1
For the calendar years 1943, 1944, and 1945	2
For the calendar years 1946, 1947, and 1948	2½
For the calendar year 1949 and subsequent calendar years	3

The employees' tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

Example. During 1942 A is an employee of B and is engaged in the performance of services which constitute employment (see section 402.203). In the following year, 1943, A receives from B $1,000 as remuneration for services performed by A in the preceding year. The tax is payable at the 2 percent rate in effect for the calendar year 1943 (the year in which the wages are received), and not at the 1 percent rate which is in effect for the calendar year 1942 (the year in which the services were performed).*

§ 402.303 *When employees' tax attaches.* The employees' tax attaches at at the time that the wages are either actually or constructively received by the employee. Wages are constructively received when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute receipt in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their receipt brought within his own control and disposition. (See section 402.403, relating to the time the employers' tax attaches.) *

SECTION 1401 (A) AND (B) OF THE ACT

(a) REQUIREMENT. The tax imposed by section 1400 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid.

(b) INDEMNIFICATION OF EMPLOYER. Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

SECTION 3661 OF THE INTERNAL REVENUE CODE

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

§ 402.304 *Collection of, and liability for, employees' tax.* The employer shall collect from each of his employees the employees' tax with respect to wages for employment performed for the employer by the employee. The employer shall make the collection by deducting or causing to be deducted the amount of the employees' tax from such wages as and when paid, either actually or constructively. The employer is required to collect the tax, notwithstanding the wages are paid in something other than money (for example, wages paid in stock, board, lodging; see section 402.227) and to pay the tax to the collector in money. In collecting employees' tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. The employer is liable for the employees' tax with respect to all wages paid by him to each of his employees whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him the employee is also liable for the employees' tax with respect to all the wages received by him. Any employees' tax collected by or on behalf of an employer is a special fund in trust for the United States. The employer is indemnified against the claims and demands of any person for the amount of any payment of such tax made by the employer to the collector.

Section 2707 of the Internal Revenue Code (see page 87 of these regulations) provides severe penalties for a wilfull failure to pay, collect, or truthfully account for any pay over, the employees' tax or for a willful attempt in any manner to evade or defeat the tax. Such penalties may be incurred by any person, including the employer, and any officer or employee of a corporate employer, or member or employee of any other employer, who as such employer, officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

§ 402.305 *Manner and time of payment of employees' tax.* The employees' tax is payable to the collector in the manner and at the time prescribed in section 402.607.*

SECTION 1403 OF THE ACT

(a) REQUIREMENT. Every employer shall furnish to each of his employees a written statement or statements, in a form suitable for retention by the employee, showing the wages paid by him to the employee after December 31, 1939. Each statement shall cover a calendar year, or one, two, three, or four calendar quarters, whether or not within the same calendar year, and shall show the name of the employer, the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of the tax imposed by section 1400 with respect to such wages. Each statement shall be furnished to the employee not later than the last day of the second calendar month following the pe-

riod covered by the statement, except that, if the employee leaves the employ of the employer, the final statement shall be furnished on the day on which the last payment of wages is made to the employee. The employer, may, at his option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering such quarter; and, in such case, the statement may show the date of payment of the wages, in lieu of the period covered by the statement.

(b) PENALTY FOR FAILURE TO FURNISH. Any employer who willfully fails to furnish a statement to an employee in the manner, at the time and showing the information, required under subsection (a), shall for each such failure be subject to a civil penalty of not more than $5. (Sec. 1403, I.R.C., as added by sec. 603, Social Security Act Amendments of 1939)

§ 402.306 *Statements for employees.* Every employer shall furnish to each of his employees a written statement or statements, in a form suitable for retention by the employee, showing with respect to wages paid by him to the employee on or after January 1, 1940, for employment on or after January 1, 1937, (1) the name of the employer, (2) the name of the employee, (3) the period covered by the statement, (4) the total amount of wages paid during such period, and (5) the amount of employees' tax with respect to such wages. Each statement shall cover a calendar year, or one, two, three, or four calendar quarters, whether or not within the same calendar year. A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31. The statement shall be furnished to the employee not later than the last day of the second calendar month following the period covered by the statement, except that, if the employee leaves the employ of the employer, the final statement shall be furnished on the day on which the last payment of wages is made to the employee. The employer may, at his option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering such quarter; and, in such case, the statement may show the date of payment of the wages in lieu of the period covered by the statement. No particular form is prescribed for the statement required to be furnished to employees under this section.

Section 1403 (b) of the Act prescribes a civil penalty of not more than $5 for each willful failure of an employer to furnish the required statement to an employee.*

SUBPART D—EMPLOYERS' TAX

SECTION 1410 OF THE ACT

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 1426 (a) paid by him after December 31, 1936, with respect to employment (as defined in section 1426 (b)) after such date:

(1) With respect to wages paid during the calendar years 1939, 1940, 1941, and 1942, the rate shall be 1 per centum.

(2) With respect to wages paid during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(3) With respect to wages paid during the calendar years 1946, 1947, and 1938, the rate shall be 2½ per centum.

(4) With respect to wages paid after December 31, 1948, the rate shall be 3 per centum. (Sec. 1410, I.R.C., as amended by sec. 604, Social Security Act Amendments of 1939.)

§ 402.401 *Measure of employers' tax.* The employers' tax is measured by the amount of wages actually or constructively paid on or after January 1, 1940, with respect to employment on or after January 1, 1937. (See sections 402.202 and 402.203, relating to employment, and sections 402.227 and 402.228, relating to wages) *

§ 402.402 *Rates and computation of employers' tax.* The rates of employers' tax applicable for the respective calendar years are as follows:

	Percent
For the calendar years 1940, 1941, and 1942	1
For the calendar years 1943, 1944, and 1945	2
For the calendar years 1946, 1947, and 1948	2½
For the calendar year 1949 and subsequent calendar years	3

The employers' tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.*

§ 402.403 *When employers' tax attaches.* The employers' tax attaches at the time that the wages are either actually or constructively paid by the employer. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition. (See section 402.303, relating to the time the employees' tax attaches) *

§ 402.404 *Liability for employers' tax.* The employer is liable for the employers' tax with respect to the wages paid to his employees for employment performed for him.*

§ 402.405 *Manner and time of payment of employers' tax.* The employers' tax is payable to the collector in the manner and at the time prescribed in section 402.607.*

SUBPART E—IDENTIFICATION OF TAXPAYERS

SECTION 1420 (A) AND (C) OF THE ACT

(a) ADMINISTRATION. The taxes imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

(c) METHOD OF COLLECTION AND PAYMENT. Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this subchapter (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner, with the approval of the Secretary.

SECTION 1430 OF THE ACT

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the taxes imposed by this subchapter. (Sec. 1430, I.R.C., as amended by sec. 903, Social Security Act Amendments of 1939.)

SECTION 2709 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1430 OF THE ACT

Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

§ 402.501 *Employers' identification numbers.* Every person who on or after January 1, 1940, has in his employ one or more individuals in employment for wages, but who prior to such date has neither secured an identification number nor made application therefor, shall make an application, in duplicate, on Form SS–4 for an identification number. Each application, together with any supplementary statement, shall be prepared in accordance with the instructions and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Such employer shall file the application either with the nearest field office of the Social Security Board in the State in which his principal place of business is located or with the collector for the district in which such place of business is located, or, if the employer has no principal place of business within the United States, with the office of the Social Security Board at Baltimore, Md. The application shall be filed on or before the seventh day after the date on which employment for wages for such employer first occurs. Copies of Form SS–4 may be obtained from any field office of the Social Security Board or from any collector. Each application shall be signed by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; (3) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (4) the fiduciary, if the employer is a trust or estate. An identification number will be assigned to the employer in due course upon the basis of information reported on the applica-

tion required under this section. Identification numbers assigned to employers shall be shown in their records, returns, and claims to the extent required by sections 402.605 and 402.609, by the instructions relating to Form SS–1a, and by section 402.704*

§ 402.502 *Employees' account numbers.* Every individual who on or after January 1, 1940, is in employment for wages, but who prior to such date has neither secured an account number nor made application therefor, shall make an application on Form SS–5 for an account number. Each application shall be prepared in accordance with the instructions and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Such employee shall file the application with the field office of the Social Security Board nearest his place of employment, or, if the employee is not working within the United States, with the office of the Social Security Board at Baltimore, Md. The application shall be filed on or before the seventh day after the date on which the employee first performs employment for wages, except that the application shall be filed on or before the date the employee leaves the employ of his employer if such date precedes such seventh day. Copies of Form SS–5 may be obtained from any field office of the Social Security Board or from any collector. An account number will be assigned to the employee by the Social Security Board in due course upon the basis of information reported on the application required under this section.

Any employee may have his account number changed at any time by applying to a field office of the Social Security Board and showing good reasons for a change. With that exception, only one account number will be assigned to an employee. Any employee whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS–5, should report such change or correction to a field office of the Social Security Board. Copies of the form for making such reports may be obtained from any field office of the Board.*

§ 402.503 *Duties of employee with respect to his account number*—(a) *Employee required to advise each employer of account number.* Every employee shall advise every employer for whom he performs employment for wages what his account number is, and what his name is, *exactly* as shown on the account number card issued to him by the Social Security Board. Care must be exercised that the employer is correctly advised of such number and name. Such advice shall be furnished to the employer as soon as the employee is notified of the assignment of an account number and thereafter as soon as the employee enters the employ of any other employer. Such advice shall be furnished by the employee, if possible, by showing his account number card to the employer. The account number originally assigned to an employee (or the number as changed in accordance with section 402.502) shall be used by him even though he enters the employ of other employers.

(b) *Duties if account number not assigned to or known by employee when hired.* If, when an employee enters the employ of any employer for wages, the employee for any reason does not know what his name or account number is as shown on an account number card, he shall in every case advise that employer what his name and account number are in accordance with paragraph (a) as soon as they are known to him, whether or not at that time he is still in the employ of that employer.

In any case where the employee has not previously advised the employer what his name and account number are as shown on his account number card, the employee shall, on the fourteenth day after the date on which the employee first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is the earlier, comply with subparagraph (1) or (2) below:

(1) If the employee has available a receipt issued to him by an office of the Social Security Board acknowledging that an application for an account number has been received, the employee shall show such receipt to the employer. (For provisions relating to the duties of an employer when an employee shows him such a receipt, see section 402.504.)

(2) If the employee does not have available a receipt issued to him by an office of the Social Security Board acknowledging that an application for an account number has been received, the employee shall furnish to the employer an application on Form SS–5, completely filled in and signed by the employee. If a copy of Form SS–5 is not available, the employee shall in lieu thereof furnish to the employer a statement in writing, signed by the employee, setting forth the date of the statement, the employee's full name, present address, date and place of birth, father's full name, mother's full name before marriage, and employee's sex and color, including a statement as to whether the employee has previously filed an application on Form SS–5 and, if so, the date and place of such filing. The furnishing of an executed Form SS–5, or statement in lieu thereof, by the employee to the employer does not relieve the employee of his obligation to make an application on Form SS–5 and file it with the field office of the Social Security Board as required by section 402.502. (For provisions relating to the disposition to be made by the employer of an executed Form SS–5 or a statement in lieu thereof furnished to him by the employee under this subparagraph, see section 402.504.)*

§ 402.504 *Duties of employer with respect to employees' account numbers*—(a) *When individual has entered his employ.* Upon being advised of the name and account number of an employee, the employer shall enter such name and number in his records, returns, and claims to the extent required by sections 402.605 and 402.609, by the instructions relating to Form SS–1a, and by section 402.704. Upon failure of an employee to advise his employer of his account number when he enters the employ of the employer, the employer shall request the employee to advise him of such number. If the employee has not been assigned a number and has not filed an application therefor with a field office of the Social Security Board, the employer shall, when the employee enters his employ, inform the employee of the provisions of sections 402.502 and 402.503.

If the employee has not advised the employer what his account number is within a period of 14 days after the date the employee first performs employment for wages for the employer, or before the employee leaves his employ if such event occurs within such period, the employer shall immediately request the employee to comply with the provisions of subparagraph (1) or (2) of section 402.503 (b).

If the employee shows to the employer, as provided in section 402.503(b)(1), a receipt issued by the Social Security Board acknowledging that an application for an account number has been received from the employee, the employer shall enter in his records with respect to such employee the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the employee exactly as shown in the receipt. The receipt shall be retained by the employee.

If, however, the employee furnishes to the employer, as provided in section 402.503 (b) (2), an executed Form SS–5 or statement in lieu thereof, the employer shall retain the form or statement for disposition as provided below.

In any case in which the employee's account number is for any reason unknown to the employer at the time the employer's return on Form SS–1a is filed for any quarter during which the employee receives wages from such employer—

(1) If the employee has shown to the employer, as provided in section 402.503 (b)(1), a receipt of the Social Security Board acknowledging that an application for an account number has been received from the employee, the employer shall enter on the return, with the entry with respect to the employee, the name and address of the employee exactly as shown in the receipt, the date of issue of the receipt, and the address of the issuing office; or

(2) If the employee has furnished to the employer, as provided in section 402.503 (b) (2), an executed Form SS–5 or statement in lieu thereof, the em-

* For statutory authority for these regulations, see note to section 402.1.

ployer shall attach such form or statement to the return; or

(3) If neither (1) nor (2) above is applicable, the employer shall attach to the return a Form SS–5 or statement, signed by the employer, setting forth as fully and clearly as practicable the employee's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the employee's sex and color, and a statement as to whether an application for an account number has previously been filed by the employee and, if so, the date and place of such filing. The employer shall also insert in such Form SS–5 or statement an explanation of why he has not secured from the employee a Form SS–5 or statement signed by the employee as provided in section 402.503 (b) (2), and shall insert the word "Employer" as part of his signature.

If the employee advises his employer what his name and account number are as shown on his account number card prior to the time the employer's return on Form SS–1a is filed and the employer enters such name and number on the return, the employer shall return to the employee any executed Form SS–5 or statement in lieu thereof furnished by the employee to the employer in accordance with section 402.503 (b) (2).

(b) *Prospective employees.* While not mandatory, it is suggested that the employer advise any prospective employee who does not have an account number what the requirements of sections 402.502 and 402.503 are.*

SUBPART F—RETURNS, PAYMENT OF TAX, AND RECORDS

SECTION 1420 OF THE ACT

(a) ADMINISTRATION. The taxes imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

* * * * *

(c) METHOD OF COLLECTION AND PAYMENT. Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this subchapter (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner, with the approval of the Secretary.

(d) FRACTIONAL PARTS OF A CENT. In the payment of any tax under this subchapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

SECTION 1430 OF THE ACT

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the taxes imposed by this subchapter. (Sec. 1430, I.R.C., as amended by sec. 903, Social Security Act Amendments of 1939.)

SECTION 2709 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1430 OF THE ACT

Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

SECTION 2701 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1430 OF THE ACT

Every person liable for the tax * * * shall make * * * returns under oath * * * to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

SECTION 3603 OF THE INTERNAL REVENUE CODE

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

SECTION 3632 OF THE INTERNAL REVENUE CODE

(a) INTERNAL REVENUE PERSONNEL.—

(1) PERSONS IN CHARGE OF ADMINISTRATION OF INTERNAL REVENUE LAWS GENERALLY. Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

(2) PERSONS IN CHARGE OF EXPORTS AND DRAWBACKS. Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal revenue laws.

(b) OTHERS. Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

SECTION 3330 OF THE INTERNAL REVENUE CODE

The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of $10, be signed or acknowledged before two witnesses instead of under oath.

SECTION 3612 (A), (B), AND (C) OF THE INTERNAL REVENUE CODE

(a) AUTHORITY OF COLLECTOR. If any person fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise.

(b) AUTHORITY OF COMMISSIONER. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise—

(1) TO MAKE RETURN. Make a return, or

(2) TO AMEND COLLECTOR'S RETURN. Amend any return made by a collector or deputy collector.

(c) LEGAL STATUS OF RETURNS. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

SECTION 3614 (A) OF THE INTERNAL REVENUE CODE

TO DETERMINE LIABILITY OF THE TAXPAYER. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, record, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SECTION 2702 (A) OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1430 OF THE ACT

DATE OF PAYMENT. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector for the district in which is located the principal place of business, at the time fixed * * * for filing the return.

§ 402.601 *Tax and information returns.* Every employer shall make a tax and information return on Form SS–1a for the first quarter after December 31, 1939, within which wages are paid to his employee or employees, and for each subsequent quarter (whether or not wages are paid therein) until he files a final return as required by the provisions of section 402.603. One original return shall be filed with the collector. For purposes of returns under the Act, the quarters shall each be three calendar months as follows: (1) from January 1 to March 31, both dates inclusive; (2) from April 1 to June 30, both dates inclusive; (3) from July 1 to September 30, both dates inclusive; and (4) from October 1 to December 31, both dates inclusive.*

§ 402.602 *When to report wages.* Wages shall be reported in the tax return for the period in which they are actually paid unless they were constructively paid in a prior tax-return period, in which case such wages shall be reported only in the return for such prior period; except that if wages actually or constructively paid before January 1, 1943, for a pay-roll period ending within a tax-return period prior to October 1, 1942, are so paid after such return period but before the return for such period is filed, the employer may report such wages in the return for such period.*

* For statutory authority for these regulations, see note to section 402.1.

§ 402.603 *Final returns.* The last return on Form SS–1a for any employer who ceases to pay wages shall be marked "Final return" by the employer or the person filing the return. Such final return shall be filed with the collector on or before the thirtieth day after the date on which the final payment of wages is made for services performed for the employer, and shall plainly show the period covered and also the date of the last payment of wages. There shall be executed as part of each final return a statement, in duplicate, giving the address at which the records required by section 402.609 will be kept, the name of the person keeping such records, and, if the business has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took effect. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement. An employer who has only temporarily ceased to pay wages, including an employer engaged in seasonal activities, shall continue to file returns, but shall enter on the face of any return on which no wages are required to be reported the date of the last payment of wages and the date when he expects to resume paying wages to one or more employees.*

§ 402.604 *Execution of returns.* Except as provided in this section, each return shall be signed and verified under oath or affirmation by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; (3) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (4) the fiduciary, if the employer is a trust or estate. The employer's return may be executed by an agent in the name of the employer if an acceptable power of attorney is filed with the collector and if such return includes the wages paid to all employees of the employer for the period covered by the return.

The oath or affirmation may be administered by any person duly authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. Returns executed abroad may be attested free of charge before a United States consular officer. If a foreign notary or other official having no seal acts as attesting officer, the authority of such attesting officer should be certified to by some judicial officer or other proper officer having knowledge of the appointment and official character of the attesting officer. This section is not an exclusive enumeration of the persons who may administer oaths or affirmations.

If the sum of the employees' tax and the employers' tax shown to be payable by any return on Form SS–1a is $10 or less, the return may be signed or acknowledged before two witnesses instead of under oath.*

§ 402.605 *Use of prescribed forms.* Copies of the prescribed return forms will so far as possible be regularly furnished employers by collectors without application therefor. An employer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Employers not supplied with the proper forms should make application therefor to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. (See section 402.606, relating to the place and time for filing returns; see also section 402.603, relating to final returns.) If the prescribed form is not available, a statement made by the employer disclosing the amount of wages paid during the period for which a return is required and the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time the statement so made will relieve the employer from liability for the addition to tax imposed for the delinquent filing of the return by section 3612 (d) (1) of the Internal Revenue Code (see section 402.804 (a)), provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form.

Each return, together with a copy thereof and any supporting data, shall be filled in and disposed of in accordance with the instructions and regulations applicable thereto. (See section 402.606, relating to the place and time for filing returns, and section 402.609 (c) and (e), relating to copies of returns, schedules, and statements, and to the place and period for keeping records.) The return shall be carefully prepared so as fully and accurately to set forth the data therein called for. Returns which have not been so prepared will not be accepted as meeting the requirements of the Act. Only one return for a tax-return period shall be filed by or for an employer. Any supplemental return filed for such period in accordance with section 402.702 or 402.703 shall constitute a part of such return. Consolidated returns of parent and subsidiary corporations are not permitted.

If in a return, or in any other manner, the employer fails to report, or incorrectly reports, to the collector, the name, account number, or wages of an employee, the employer shall fully advise the collector of the omission or error by letter; except that such letter is not required if the omission or error is corrected by adjustment, supplemental return, credit, refund, or abatement, within seven months after the date the correct data are ascertained. The employer shall include in such letter his identification number, each tax-return period for which the data were omitted or for which the incorrect data were furnished, the data incorrectly reported for each period, and the data which should have been reported. A copy of such letter shall be retained by the employer as a part of his records.*

§ 402.606 *Place and time for filing returns.* Each return shall be filed with the collector for the district in which is located the principal place of business of the employer, or if the employer has no principal place of business in the United States, with the collector at Baltimore, Md. Except as provided in section 402.603, each return shall be filed on or before the last day of the first month following the period for which it is made. If the last day for filing any return falls on Sunday or a legal holiday, the return may be filed on the next following business day. If placed in the mails, the return shall be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the due date. As to additions to tax for failure to file a return within the prescribed time, see section 402.804. See also section 2707 of the Internal Revenue Code, relating to penalties.*

§ 402.607 *Payment of tax.* The employees' tax and the employers' tax required to be reported on each return on Form SS–1a are due and payable to the collector, without assessment by the Commissioner or notice by the collector, at the time fixed for filing such return. For provisions relating to interest, additions to tax, and penalties, see sections 402.802, 402.803, and 402.804 of these regulations and section 2707 of the Internal Revenue Code.*

§ 402.608 *When fractional part of cent may be disregarded.* In the payment of taxes to the collector a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent shall not be disregarded in the computation of taxes. See section 402.304 for provisions relating to fractional parts of a cent in connection with the deduction of employees' tax from wages.*

§ 402.609 *Records*—(a) *Records of employers.* Every employer liable for tax shall keep accurate records of all remuneration (whether in cash or in a medium other than cash) paid to his employees after December 31, 1939, for services performed for him after December 31, 1936. Such records shall show with respect to each employee—

(1) the name, address, and account number of the employee (see section 402.504, relating to account numbers), and such additional information with respect to the employee as is required by

section 402.504 (a) when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Board,

(2) the total amount (including any sum withheld therefrom as tax or for any other reason) and date of each remuneration payment and the period of services covered by such payment,

(3) the amount of such remuneration payment which constitutes wages subject to tax (see sections 402.227 and 402.228), and

(4) the amount of employees' tax withheld or collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected.

If the total remuneration payment (item (2), above) and the amount thereof which is taxable (item (3), above) are not equal, the reason therefor shall be made a matter of record. Accurate records of the details of each adjustment or settlement made pursuant to section 402.702 or 402.703 shall also be kept.

No particular form is prescribed for keeping the records required by this paragraph (a). Each employer shall use such forms and systems of accounting as will enable the Commissioner to ascertain whether the taxes for which the employer is liable are correctly computed and paid.

(b) *Records of employees.* While not mandatory, it is advisable for each employee to keep permanent, accurate records showing the name and address of each employer for whom he performs services as an employee, the dates of beginning and termination of such services, the information with respect to himself which is required by paragraph (a) of this section to be kept by employers, and the receipts furnished in accordance with the provisions of section 402.306. (See, however, paragraph (d), relating to records of claimants)

(c) *Copies of returns, schedules, and statements.* Every employer who is required, by these regulations or by instructions applicable to any form prescribed under these regulations, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as part of his records.

(d) *Records of claimants.* Any person (including an employee) claiming refund, credit, or abatement of any tax, penalty, or interest shall keep a complete and detailed record with respect to such tax, penalty, or interest.

(e) *Place and period for keeping records.* All records required by these regulations shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers. Such records shall at all times be open for inspection by such officers. If the employer has a principal place of business in the United States, the records required by paragraphs (c) and (d) of this section shall be kept at such place of business.

Records required by paragraphs (a) and (c) of this section shall be maintained for a period of at least four years after the date the tax to which they relate becomes due, or the date the tax is paid, whichever is the later. Records required by paragraph (d) of this section (including any record required by paragraph (a) or (c) which relates to a claim) shall be maintained for a period of at least four years after the date the claim is filed.*

SUBPART G—ADJUSTMENTS, CLAIMS, AND ASSESSMENTS

SECTION 1401 (c) OF THE ACT

If more or less than the correct amount of tax imposed by section 1400 is paid with respect to any payment of remuneration, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as may be prescribed by regulations made under this subchapter. (Sec. 1401 (c), I.R.C., as amended by sec. 602 (a), Social Security Act Amendments of 1939.)

SECTION 1411 OF THE ACT

If more or less than the correct amount of tax imposed by section 1410 is paid with respect to any payment of remuneration, proper adjustments with respect to the tax shall be made, without interest, in such manner and at such times as may be prescribed by regulations made under this subchapter. (Sec. 1411, I.R.C., as amended by sec. 605, Social Security Act Amendments of 1939.)

§ 402.701 *Adjustments in general.* Errors in the payment of employees' tax and employers' tax must be adjusted in certain cases without interest. Not all corrections of erroneous collections or payments of tax, however, constitute adjustments within the meaning of these regulations. The various situations under which such adjustments shall be made are set forth in sections 402,702 and 402.703, the provisions of which also relate to settlement other than by adjustment under certain circumstances set forth therein. No underpayment of employees' tax or employers' tax shall be reported pursuant to such sections after receipt from the collector of notice and demand for payment thereof based upon an assessment, but the amount shall be paid in accordance with such notice and demand. Every return on which an adjustment or settlement is reported pursuant to section 402.702 or 402.703 must have securely attached as a part thereof a statement, in duplicate, explaining the adjustment or settlement, designating the tax-return period in which the error was ascertained, and setting forth such other information as may be required by these regulations and by the instructions relating to the return. If an adjustment of an overcollection of employees' tax which an employer has repaid to an employee is reported on a return, such statement shall include the fact that such tax was repaid to the employee. See section 402.702 (b) (2))*

§ 402.702 *Adjustment of employees' tax*—(a) *Undercollections*—(1) *Prior to filing of return.* If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of wages to an employee and the error is ascertained prior to the time the return on Form SS–1a is filed with the collector for the period in which such wages are paid, the employer shall nevertheless report on such return and pay to the collector the correct amount of employees' tax. However, the reporting and payment by the employer of the correct amount of such tax in accordance with this subparagraph do not constitute an adjustment, and the amount shall not be reported as an adjustment on the return.

(2) *After return is filed.* If no employees' tax or less than the correct amount of employees' tax with respect to a payment of wages to an employee is reported on a return and paid to the collector, the employer shall adjust the underpayment by (A) reporting the additional amount due by reason of such underpayment as an adjustment on a return on Form SS–1a filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained, or (B) reporting such additional amount on a supplemental return on Forms SS–1 or Form SS–1a for the tax-return period in which such payment of wages is made. The reporting of such an underpayment on a supplemental return constitutes an adjustment within the meaning of this subparagraph only when the supplemental return is filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained. (See section 402.605, relating in part to supplemental returns.) The amount of each underpayment adjusted in accordance with this subparagraph shall be paid to the collector, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subparagraph but the amount thereof is not paid when due, interest thereafter accrues.

If no employees' tax or less than the correct amount of employees' tax with respect to a payment of wages to an employee is reported on a return and paid to the collector and such underpayment is not reported as an adjustment within the time prescribed by this subparagraph, the amount of such underpayment shall be (A) reported on the employer's next return on Form SS–1a, or (B) reported immediately on a supplemental return on Form SS–1 or Form SS–1a. (For interest accruing on amounts so reported, see section 402.802)

*For statutory authority for these regulations, see note to section 402.1.

(3) *Deductions from employee.* If an employer collects no employees' tax or less than the correct amount of employees' tax from an employee with respect to wages received by the employee, the employer shall collect the amount of the undercollection by deducting such amount from remuneration of the employee, if any, under his control after he ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. (See sections 402.227 and 402.228, relating to wages) If the employer ascertains the error prior to the time the return is required to be filed for the period in which such wages are paid, or if the employer ascertains the error subsequent to such time and the error is subject to adjustment under the provisions of subparagraph (2), the deduction of the amount of the undercollection in correction of such error shall be made without interest. The obligation of the employee to the employer with respect to an undercollection of employees' tax from the employee not subsequently corrected by a deduction made as prescribed in the foregoing provisions of this subparagraph is a matter for settlement between the employee and the employer. The amount of the employees' tax, in the case of a prior undercollection thereof from the employee, shall be reported and paid as provided in subparagraphs (1) and (2). Amounts deducted from remuneration of the employee, and other settlements between the employee and the employer, in correction of an undercollection of employees' tax, shall be shown on statements furnished by the employer to the employee in accordance with section 402.306. If an employer makes an erroneous collection of employees' tax from two or more of his employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of employees' tax from one employee may not be used to offset an undercollection of such tax from another.

(b) *Overcollections*—(1) *Prior to filing of return.* If an employer (A) during any tax-return period collects more than the correct amount of employees' tax from any employee, and (B) repays the amount of the overcollection to the employee prior to the time the return on Form SS–1a for such period is filed with the collector, and (C) obtains and keeps as part of his records the written receipt of the employee, showing the date and amount of the repayment, the employer shall not report on any return or pay to the collector the amount of the overcollection. However, every overcollection not repaid to and receipted for by the employee as provided in this subparagraph must be reported and paid to the collector with the return on Form SS–1a for the period in which the overcollection was made.

(2) *After return is filed.* If an employer collects from any employee and pays to the collector more than the correct amount of employees' tax, the employer shall adjust the overcollection by repayment or reimbursing the employee in the amount thereof.

If the amount of the overcollection is repaid, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. (See section 402.701, relating in part to statements required in explanation of adjustments of overcollections of employees' tax.)

If the employer does not repay the employee, the employer shall reimburse the employee by applying the amount of the overcollection against the employees' tax which attaches to wages paid to the employee prior to the expiration of the tax-return period following the tax-return period in which the error is ascertained. If the amount of the overcollection exceeds the amount so applied against such employees' tax, the excess amount shall be repaid to the employee as required by this subparagraph.

An overcollection is adjustable under this subparagraph only if it is completed prior to the expiration of the tax-return period following the tax-return period in which the error is ascertained by the employer, and then only if the adjustment is reported on a return filed within the 4-year period after the date the overpayment was made to the collector. A claim for credit or refund (in accordance with section 402.704) may be filed within such 4-year period for any overcollection which cannot be adjusted under this subparagraph.*

§ 402.703 *Adjustment of employers' tax*—(a) *Underpayments.* If no employers' tax or less than the correct amount of employers' tax with respect to a payment of wages to an employee is reported on a return and paid to the collector, the employer shall adjust the underpayment by (A) reporting the additional amount due by reason of such underpayment as an adjustment on a return on Form SS–1a filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained, or (B) reporting such additional amount on a supplemental return on Form SS–1 or Form SS–1a for the tax-return period in which such payment of wages is made. The reporting of such an underpayment on a supplemental return constitutes an adjustment within the meaning of this paragraph only when the supplemental return is filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained. (See section 402.605, relating in part to supplemental returns.) The amount of each underpayment adjusted in accordance with this paragraph shall be paid to the collector, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subparagraph but the amount thereof is not paid when due, interest thereafter accrues.

If no employers' tax or less than the correct amount of employers' tax with respect to a payment of wages to an employee is reported on a return and paid to the collector and such underpayment is not adjusted in accordance with the provisions of this paragraph, the amount of such underpayment shall be (A) reported on the employer's next return on Form SS–1a, or (B) reported immediately on a supplemental return on Form SS–1 or Form SS–1a. (For interest accruing on amounts so reported, see section 402.802.)

(b) *Overpayments.* If (1) an employer pays more than the correct amount of employers' tax with respect to any payment of remuneration, and (2) the employer is required under paragraph (b) of section 402.702 to adjust a corresponding overpayment of employees' tax with respect to the same payment of remuneration to the employee, the employer shall adjust the overpayment of employers' tax to the same extent and on the same return or returns on which the adjustment of employees' tax is reported. The adjustment of employers' tax shall be made by deducting the amount of the overpayment from the amount of employers' tax reported on such return or returns. No overpayment shall be adjusted under this paragraph after the expiration of the 4-year period after the date the overpayment was made to the collector. If an overpayment of employers' tax is made with respect to a payment of remuneration to an employee, but no corresponding overpayment of employees' tax is made with respect to the same payment of remuneration, the overpayment of employers' tax is not adjustable under this paragraph. (See section 402.704, relating to refunds and credits) *

SECTION 1421 OF THE ACT

If more * * * than the correct amount of tax imposed by section 1400 or 1410 is paid or deducted with respect to any wage payment and the overpayment * * * of tax cannot be adjusted under section 1401 (c) or 1411 the amount of the overpayment shall be refunded * * * in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this subchapter.

SECTION 2703 (A) OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1430 OF THE ACT

IN GENERAL. In the case of any overpayment or overcollection of the tax * * * the person making such overpayment or overcollection may take credit therefor against taxes due upon any * * * return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

SECTION 3770 (A) OF THE INTERNAL REVENUE CODE

TO TAXPAYERS—

(1) ASSESSMENTS AND COLLECTIONS GENERALLY. Except as otherwise provided by law in the case of income, estate, and gift taxes, the Commissioner, subject to regulations pre-

scribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

(2) ASSESSMENTS AND COLLECTIONS AFTER LIMITATION PERIOD. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

* * * * *

SECTION 3313 OF THE INTERNAL REVENUE CODE

All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must * * * be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund * * * shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

SECTION 3477 OF THE UNITED STATES REVISED STATUTES

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

§ 402.704 *Refund or credit of overpayments which are not adjustable; abatement of overassessments*—(a) *Who may make claims.* If more than the correct amount of tax, penalty, or interest is paid to the collector, the person who paid such tax, penalty, or interest to the collector may file a claim for refund of such overpayment or such person may take credit for the overpayment on any return on Form SS–1a which he subsequently files. (See paragraph (e), relating in part to overpayments which are adjustable) If more than the correct amount of tax, penalty, or interest is assessed but not paid to the collector, the person against whom the assessment is made may file a claim for abatement of such overassessment. (See also paragraph (c), relating to claims by employees)

(b) *Statements supporting employers' claims for employees' tax.* Every claim filed by an employer for refund, credit, or abatement of employees' tax collected from an employee shall include a statement that the employer has repaid the tax to the employee or has secured the written consent of such employee to allowance of the refund, credit, or abatement. In every such case, the employer shall maintain as part of his records the written receipt of the employee, showing the date and amount of the repayment, or the written consent of the employee, whichever is used in support of the claim. (See paragraph (d), relating to form of claims)

(c) *Refund claims made by employees.* If (1) more than the correct amount of employees' tax is collected by an employer from an employee and paid to the collector, and (2) such overcollection is not adjustable under section 402.702, and (3) the employee does not receive reimbursement in any manner from such employer and does not authorize the employer to file a claim and receive refund or credit, such employee may file a claim for refund of such overpayment. The employee shall submit with the claim a statement setting forth the extent, if any, to which the employer has reimbursed the employee in any manner for the overcollection, the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer, and such facts as will establish that the overpayment is not adjustable under section 402.702. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employees' tax paid by such employer to the collector of internal revenue. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer. (For provisions relating to special refunds of employees' tax on wages over $3,000, see section 402.705)

(d) *Form of claims.* Each claim for refund or abatement under this section shall be made on Form 843 in accordance with these regulations and with the instructions relating to such form, and shall designate the tax-return period in which the error was ascertained. Copies of Form 843 may be obtained from any collector. If credit is taken under this section, a claim on Form 843 is not required, but the return on which such credit is claimed shall have securely attached as a part thereof a statement which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, designating the tax-return period in which the error was ascertained, and showing such other information as is required by these regulations or by the instructions relating to the return.

Whenever a claim for refund, credit, or abatement is made with respect to remuneration which was erroneously reported on Form SS–2a or on Schedule A of Form SS–1a, such claim shall include a statement showing (1) the identification number of the employer, (2) the name and account number of the employee for whom such remuneration was so reported, (3) the period covered by such Form SS–2a or such Schedule A of Form SS–1a, (4) the amount of remuneration actually reported as wages for such employee, and (5) the amount of wages which should have been reported for such employee.

(e) *Limitations on claims.* No refund or credit will be allowed after the expiration of four years after the payment to the collector of the tax, penalty, or interest, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such 4-year period. No refund or credit of an overpayment will be allowed if such overpayment is adjustable under section 402.702 or 402.703.

(f) *Claims improperly made.* Any claim which does not comply with the requirements of this section will not be considered for any purpose as a claim for refund, credit, or abatement.

(g) *Proof of representative capacity.* If a return is made by an individual who thereafter dies and a refund claim is made by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is made. If an executor, administrator, guardian, trustee, receiver, or other fiduciary makes a return and thereafter a refund claim is made by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was made by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is made by a fiduciary other than the one by whom the return was made, the necessary documentary evidence should accompany the claim. The affidavit may be made by the agent of the person assessed, but in such case a power of attorney must accompany the claim.

(h) *Refunds under section 902 (f) of Social Security Act Amendments of 1939 and section 2 of Act of August 11, 1939.* The provisions of this section shall apply in the case of claims for refund with respect to services described by section 902 (f) of the Social Security Act Amendments of 1939 and section 2 of the Act of August 11, 1939 (53 Stat. 1420). (For provisions relating to such services, see section 402.202) *

SECTION 1401 (D) OF THE ACT

If by reason of an employee rendering service for more than one employer during any calendar year after the calendar year 1939, the wages of the employee with respect to employment during such year exceed $3,000, the employee shall be entitled to a refund of any amount of tax, with respect to such wages, imposed by section 1400, deducted from such wages and paid to the collector, which exceeds the tax with respect to the first $3,000 of such wages paid. Refund under this section may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax; except that no such refund shall be made unless (1) the employee makes a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (2) such claim is made within two years after the calendar year in which the wages are paid with respect to which refund of tax is claimed. No interest shall be allowed or paid with respect to any such refund. (Sec. 1401 (d), I.R.C., as added by sec. 602 (b), Social Security Act Amendments of 1939)

§ 402.705 *Special refunds of employees' tax on wages over $3,000.* If an employee receives wages in excess of $3,000 from two or more employers for services performed during the calendar year 1940 or any subsequent calendar year, the employee may file a claim for refund of the amount, if any, by which the employees' tax deducted and paid to a collector with respect to such wages exceeds the employees' tax with respect to the first $3,000 of such wages. (See sections 402.227 and 402.228, relating to wages) Each claim shall be made with respect to wages for services performed within one calendar year. The employee shall submit with the claim the best available information establishing, with respect to each employer for whom he performed services during the calendar year, (1) the name and address of such employer, (2) the account number of the employee and the employee's name as reported by the employer on his returns, (3) the amount of wages paid during the calendar year to which the claim relates for services performed by the employee during that year, (4) the amount of wages, if any, paid during each subsequent calendar year for services performed by the employee during the year to which the claim relates, (5) the amount of employees' tax, if any, deducted from such wages during each of such years and paid to the collector, and (6) the address of the collector to whom such tax was paid. Such information shall be furnished, if possible, in the form of statements made by the employers, each of whom should include in his statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employees' tax. If the statement of any employer is not submitted with the claim, the employee shall include in the claim an explanation of his inability to submit such statement. Other information may be required, but should be submitted only upon the receipt of a specific request therefor. The employee's claim shall be made on Form 843, in accordance with these regulations and the instructions relating to such form, and shall be filed with the collector for the district in which the employee resides. No interest will be allowed or paid by the Government on the amount of any refund under this section. No refund will be made under this section unless (1) the employee files a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (2) such claim is filed within two years after the calendar year in which the wages are paid with respect to which refund of tax is claimed.

Example. Employee A receives taxable wages in the amount of $2,000 from each of his employers, X, Y, and Z, for services performed during the calendar year 1942, or a total of $6,000 for such year. The first $2,000 of such wages is paid during the calendar year 1942 by employer X, who deducts employees' tax in the amount of $20 from A's wages, and pays such tax to the collector. The second $2,000 of such wages is paid during the calendar year 1942 by employer Y, who pays employees' tax in the amount of $20 to the collector *without deducting such tax from A's wages.* Employer Z pays $1,000 of such wages to A during the year 1942 and $1,000 during the year 1943. The rate of such tax for the year 1942 is 1 percent and the rate for 1943 is 2 percent. Employer Z deducts employees' tax in the amount of $30 from such wages ($10 during 1942 and $20 during 1943) and pays such tax to the collector. Thus, employees' tax in the total amount of $50 is deducted from A's wages and paid to a collector. The amount of employees' tax with respect to the first $3,000 of such wages is $30. A may file a claim for refund of $20.*

SECTION 1422 OF THE ACT

Any tax paid under this subchapter by a taxpayer with respect to any period with respect to which he is not liable to tax under this subchapter shall be credited against the tax, if any, imposed by subchapter B upon such taxpayer, and the balance, if any, shall be refunded.

§ 402.706 *Credit and refund of taxes paid for period during which liability existed under subchapter B of chapter 9 of the Internal Revenue Code.* If any person pays any amount as tax under the Federal Insurance Contributions Act with respect to any period for which he is not liable for such tax and such person is liable for a tax imposed by subchapter B of chapter 9 of the Internal Revenue Code (which subchapter corresponds to and, effective April 1, 1939, superseded the Carriers Taxing Act of 1937), the amount paid as tax under the Federal Insurance Contributions Act shall be credited against the tax for which the person is liable under such subchapter and the balance, if any, shall be refunded. Each claim for refund under this section shall be made in accordance with section 402.704. Each claim for credit under this section shall be made on Form 843 in accordance with the instructions relating to such form and the applicable provisions of section 402.704 of these regulations. See section 1531 of subchapter B of chapter 9 of the Internal Revenue Code for credit or refund of amounts paid as tax under such subchapter for any period during which liability existed under the Federal Insurance Contributions Act.*

SECTION 1421 OF THE ACT

If * * * less than the correct amount of tax imposed by section 1400 or 1410 is paid or deducted with respect to any wage payment and the * * * underpayment of tax cannot be adjusted under section 1401 (c) or 1411 * * * the amount of the underpayment shall be collected, in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this subchapter.

§ 402.707 *Assessment of underpayments.* If any tax is not paid to the collector when due, the Commissioner may, as the circumstances warrant, assess the tax (whether or not the underpayment is otherwise adjustable) or afford the employer opportunity to adjust the underpayment pursuant to section 402.702 or 402.703. Unpaid employers' tax or employees' tax may be assessed against the employer. Employees' tax not collected by the employer may also be assessed against the employee. The unpaid amount, together with interest and penalty, if any, will be collected, pursuant to section 3655 of the Internal Revenue Code and other applicable provisions of law, from the person against whom the assessment is made. If an employer pays employees' tax pursuant to an assessment against him without an adjustment having been made pursuant to section 402.702, reimbursement is a matter to be settled between the employer and the employee. (See section 402.802, relating to interest, and section 402.803, relating to penalty for failure to pay an assessment after notice and demand. See also section 402.801, relating to jeopardy assessments) *

SUBPART H—MISCELLANEOUS PROVISIONS

SECTION 3660 OF THE INTERNAL REVENUE CODE

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3690.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

§ 402.801 *Jeopardy assessments.* Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the tax-return period or periods involved, the amount of tax due for each period, the date any return was filed by or for the taxpayer for such period, a reference to any prior assessment made for such period against the taxpayer, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired and with such sureties as the collector deems necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3690 of the Internal Revenue Code.*

SECTION 1420 (B) OF THE ACT

If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 1401 (c) and 1411) at the rate of 6 per centum per annum from the date the tax became due until paid.

SECTION 3655 OF THE INTERNAL REVENUE CODE

(a) DELIVERY. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof.

(b) ADDITION TO TAX FOR NONPAYMENT. If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of 5 per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment * * *.

* * * * *

§ 402.802 *Interest.* If the tax is not paid to the collector when due and is not adjusted under section 402.702 or 402.703, interest accrues at the rate of 6 percent per annum.*

§ 402.803 *Addition to tax for failure to pay an assessment after notice and demand.* (a) If tax, penalty, or interest is assessed and the entire amount thereof is not paid within 10 days after the date of issuance of notice and demand for payment thereof, based on such assessment, there accrues under section 3655 of the Internal Revenue Code (except as provided in paragraph (b) of this section) a penalty of 5 percent of the assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of notice and demand, a claim for abatement of any amount of the assessment is filed with the collector, the 5 percent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.*

SECTION 3612 (D) AND (E) OF THE INTERNAL REVENUE CODE

(d) ADDITIONS TO TAX.—

(1) FAILURE TO FILE RETURN. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided*, That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

(2) FRAUD. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

* * * * *

(e) COLLECTION OF ADDITIONS TO TAX. The amount added to any tax under paragraphs (1) and (2) of subsection (d) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

§ 402.804 *Additions to tax for delinquent or false returns*—(a) *Delinquent returns.* If a person fails to make and file a return required by these regulations within the prescribed time, a certain percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate. In computing the period of delinquency all Sundays and holidays after the due date are counted. Two classes of delinquents are subject to this addition to the tax:

(1) those who do not file returns and for whom returns are made by a collector, a deputy collector, or the Commissioner; and

(2) those who file tardy returns and are unable to show reasonable cause for the delay.

A person who files a tardy return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(b) *False returns.* If a false or fraudulent return is willfully made, the addition to tax under section 3612 (d) (2) of the Internal Revenue Code, is 50 percent of the total tax due for the entire period involved including any tax previously paid.*

SECTION 2707 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1430 OF THE ACT

(a) Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax * * * or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(b) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter who willfully fails to pay such tax, make such returns, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than

*For statutory authority for these regulations, see note to section 402.1.

five years, or both, together with the costs of prosecution.

(d) The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SECTION 3616 OF THE INTERNAL REVENUE CODE

Whenever any person—

(a) FALSE RETURNS. Delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made; or,

(b) NEGLECT TO OBEY SUMMONS. Being duly summoned to appear to testify, or to appear and produce books as required under section 3615, neglects to appear or to produce said books—

he shall be fined not exceeding $1,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

* * * * *

SECTION 35 (A) OF THE CRIMINAL CODE, AS AMENDED

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both. (Sec. 35, Act of Mar. 4, 1909, 35 Stat. 1095, as amended by Act of April 4, 1938, 52 Stat. 197, 18 U.S.C., Sup. IV, 80, 83)

SECTION 3798 (B) OF THE INTERNAL REVENUE CODE

(1) ASSISTANCE IN PREPARATION OR PRESENTATION. Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(2) PERSON DEFINED. The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SECTION 208 OF THE SOCIAL SECURITY ACT, AS AMENDED

Whoever, for the purpose of causing an increase in any payment authorized to be made under this title [Title II of the Social Security Act, as amended], or for the purpose of causing any payment to be made where no payment is authorized under this title, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under the Federal Insurance Contributions Act) as to the amount of any wages paid or received or the period during which earned or paid, or whoever makes or causes to be made any false statement of a material fact in any application for any payment under this title, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such an application, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both. (Sec. 208 of Title II, Social Security Act, as amended by sec. 201, Social Security Act Amendments of 1939)

SECTION 1106 OF THE SOCIAL SECURITY ACT, AS AMENDED

No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or the Federal Insurance Contributions Act or under regulations made under authority thereof, which has been transmitted to the Board by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Board or by any officer or employee of the Board in the course of discharging the duties of the Board, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Board or from any officer or employee of the Board, shall be made except as the Board may by regulations prescribe. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both. (Sec. 1106, Social Security Act, as added by sec. 802, Social Security Act Amendments of 1939)

SECTION 1107 OF THE SOCIAL SECURITY ACT, AS AMENDED

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of * * * the Federal Insurance Contributions Act, * * * or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual * * * falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both. (Sec. 1107, Social Security Act, as added by sec. 802, Social Security Act Amendments of 1939.)

SECTION 1430 OF THE ACT

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the taxes imposed by this subchapter. (Sec. 1430, I. R. C., as amended by sec. 903, Social Security Act Amendments of 1939.)

SECTION 1429 OF THE ACT

* * * The Commissioner, with the approval of the Secretary, shall make and publish rules and regulations for the enforcement of this subchapter.

SECTION 3791 OF THE INTERNAL REVENUE CODE

(a) AUTHORIZATION.—

(1) IN GENERAL.— * * * the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title [Internal Revenue Code].

(2) IN CASE OF CHANGE IN LAW.—The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

§ 402.805 *Promulgation of regulations.* In pursuance of section 1429 of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed. (See sections 402.101 and 402.102, relating to the scope of these regulations and the extent to which they supersede prior regulations) *

[SEAL] T. MOONEY,
Acting Commissioner of Internal Revenue.

Approved, February 24, 1940.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

[F. R. Doc. 40–813; Filed, February 26, 1940; 11:24 a. m.]

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION

PART 516—REGULATIONS ON RECORDS TO BE KEPT BY EMPLOYERS PURSUANT TO SECTION 11 (C) OF THE FAIR LABOR STANDARDS ACT

The following amendment to Regulations, Part 516 (Regulations on Records to be Kept by Employers Pursuant to Section 11 (c) of the Fair Labor Standards Act of 1938) is hereby issued. This amendment amends § 516.3[1] of said regulations, *place and period for keeping records*, and shall become effective upon my signing the original and publication thereof in the FEDERAL REGISTER and shall be in force and effect until repealed or modified by regulations thereafter made and published.

Signed at Washington, D. C., this 20th day of February 1940.

HAROLD D. JACOBS,
Administrator.

§ 516.3 *Place and period for keeping records.* (a) Each employer shall keep the records required by Section 516.1 at the place or places of employment, or at one or more established central record

[1] 3 F.R. 2533.

keeping offices where such records are customarily maintained. Where such records are maintained at a central record keeping office, other than at the place or places of employment, the employer, in addition to the records required by Section 516.1, shall maintain a record for each employee of the total wages paid and total hours worked each workweek at the place or places of employment.

(b) All records required by Section 516.1 shall be kept safe and readily accessible for a period of at least four years after the entry of the record, and such additional records as are required by subsection (a) hereof shall be kept safe and readily accessible for a period of at least two years after the entry of the record. All such records shall be open to inspection and transcription by the Administrator or his duly authorized and designated representative at any time. Where the records required by Section 516.1 are maintained at a central record keeping office, other than at the place or places of employment, such records shall be made available at the place or places of employment without delay upon reasonable advance notice from the Administrator or his duly authorized and designated representative.*

[F. R. Doc. 40–798; Filed, February 23, 1940; 2:14 p. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER II—BUREAU OF RECLAMATION

FIRST FORM RECLAMATION WITHDRAWAL, WILLOW CREEK RESERVOIR SITE, LYMAN PROJECT, WYOMING

Correction

The land description in F.R. Doc. 40–312 (filed, January 19, 1940, at 9:34 a. m.), appearing on page 241 of the issue for Saturday, January 20, 1940, is hereby corrected by the insertion of a comma so that the sixth line reads "Sec. 22, E½, SE¼NW¼ and E½SW¼;".

Notices

DEPARTMENT OF LABOR.

Wage and Hour Division.

NOTICE OF REVIEW OF DETERMINATION DENYING CERTAIN APPLICATIONS FOR PARTIAL EXEMPTION OF THE QUARRYING OF DIMENSION STONE FROM SURFACE OR OPEN CUTS, AS A SEASONAL INDUSTRY

Whereas, applications having been made by the Hall Grindstone Company and sundry other parties under Section 7 (b) (3) of the Fair Labor Standards Act of 1938, and Regulations, Part 526, as amended by the Administrator thereunder, for partial exemption of the quarrying of dimension stone from surface or open cuts from the maximum hours provisions of Section 7 (a) of said Act pursuant to Section 7 (b) (3) applicable to industries found by the Administrator to be of a seasonal nature; and

Whereas, a public hearing on said applications was held before Harold Stein, the representative of the Administrator, duly authorized to take testimony, hear argument and determine whether or not the quarrying of dimension stone from surface or open cuts or any subdivision thereof is an industry of a seasonal nature within the meaning of Section 7 (b) (3) of the Fair Labor Standards Act of 1938, and Part 526 of Regulations issued thereunder, and

Whereas, following such hearing, the said Harold Stein duly made his findings of fact and determined as follows:

"1. The excavating, hauling, and milling of grit grindstones from surface or open cuts in the Southern Ohio field, if considered as a single industry or branch of an industry, does not cease operation during the year, and, therefore, is not an industry of a seasonal nature within the meaning of Section 7 (b) (3) of the Act and Part 526 of Regulations issued thereunder, and

"2. The excavating, or the excavating and hauling of grit grindstones from surface or open cuts in the southern Ohio field takes place during a period too long in relation to the period of exemption afforded by Section 7 (b) (3) of the Fair Labor Standards Act, to justify a finding that such operations, even if they constitute an industry or branch thereof, are of a seasonal nature, and, therefore, do not constitute an industry of a seasonal nature within the meaning of Section 7 (b) (3) of the Act and Part 526 of the Regulations issued thereunder, and

"3. The quarrying and milling of slate in the Vermont-New York zone is admittedly not of a seasonal nature within the meaning of Regulations, Part 526, and

"4. The record is inconclusive on the existence or extent of any other branches, whether of a seasonal nature or not, of the dimension stone industry for which applications were filed.

"The applications of the Hall Grindstone Company and the Vermont-New York Slate Industry are denied.

"All other applications from employers in the dimension stone industry are denied without prejudice"; and

Whereas, said Findings and Determination were duly filed with the Administrator on January 17, 1940, and are now on file in Room 5144, Department of Labor Building, Washington, D. C., and available for examination by all interested parties; and

Whereas, on January 23, 1940, the Administrator caused to be published in the FEDERAL REGISTER (5 FR 264) a notice which stated that, pursuant to the provisions of § 526.7 of the aforesaid Regulations, any person aggrieved by the said determination might, within fifteen days after January 23, 1940, file a petition with the Administrator requesting that he review the action of the said representative upon the record of hearing before the said representative; and

Whereas, a petition for review, a copy of which is on file in Room 5144, Department of Labor Building, Washington, D. C., and there available for examination by all interested parties, has been duly filed by the Hall Grindstone Company.

Now, therefore, the petition for review is hereby granted and notice is hereby given that the Administrator, for the purpose of reviewing the aforementioned Findings and Determination, and to make a final determination of the questions set forth in the second paragraph of this notice, will receive briefs from interested parties either in support of or in opposition to the aforementioned Findings and Determination, provided that briefs are filed with the Administrator, Wage and Hour Division, prior to the close of business March 19, 1940. All briefs should be filed in triplicate and will be available for inspection by interested parties in Room 5144, U. S. Department of Labor Building, Washington, D. C.

Signed at Washington, D. C., this 23rd day of February 1940.

HAROLD D. JACOBS,
Administrator.

[F. R. Doc. 40–799; Filed, February 23, 1940; 2:14 p. m.]

NOTICE OF ISSUANCE OF A SPECIAL CERTIFICATE FOR THE EMPLOYMENT OF LEARNERS IN THE APPAREL INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Apparel Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued to the employers listed below effective February 27, 1940, until June 25, 1940, unless otherwise indicated, subject to the following terms and limited to the number of learners indicated opposite the employer's name:

OCCUPATIONS, WAGE RATES, AND CONDITIONS

The employment of learners in the Apparel Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

(1) A learner is a person who has had less than eight weeks' experience in the past three years upon a stitching operation in the Apparel Industry.

(2) The employment of learners under these Certificates is limited to the operation of stitching machines and for eight (8) weeks for any one learner. During this period, learners shall be paid at least 22½¢ per hour. If experi-

*This § 516.3 as amended, issued under the authority contained in Section 11 (c), 52 Stat. 1060.

enced workers are paid on a piece rate basis, the same piece rates shall be paid to the learners employed on similar work and they shall receive earnings on such piece rates if in excess of 22½¢ per hour but in no case less than 22½¢ per hour.

(3) These Special Certificates are issued on representations by the employer that (a) experienced stitching machine operators are not available and (b) that he is actually in need of learners at subminimum rates in order to prevent curtailment of opportunities for employment.

(4) Under these Special Certificates, no learner shall be employed at a subminimum wage until and unless the Certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.

(5) These Special Certificates are issued ex parte under Section 14 of the said Act and Section 522.5 (b) of the Regulations, Part 522, as amended. For fifteen days following the publication of this notice, the Administrator will receive detailed written objections as provided for in said Section 522.5 (b). Such Special Certificates may be canceled as of the date of issuance and if so canceled, reimbursement of all persons employed under such Certificate must be made in an amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

NAME AND ADDRESS OF FIRM AND PRODUCT

Great Western Garment Company, Wichita Falls, Texas (45 learners), overalls, work shirts, and pants.

Warrensburg Shirt Company, Warrensburg, New York (15 learners), shirts and trousers.

Signed at Washington, D. C., this 26th day of February 1940.

MERLE D. VINCENT,
Authorized Representative of the Administrator.

[F. R. Doc. 40–815; Filed, February 26, 1940; 12:45 p. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE APPAREL INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Apparel Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued ex parte under Section 14 of the said Act, Section 522.5 (d) of Regulations Part 522, as amended, to the employers listed below effective February 27, 1940, until October 24, 1940, subject to the following terms:

OCCUPATIONS, WAGE RATES, AND CONDITIONS

The employment of learners in the Apparel Industry under these Certificates is limited to the following occupations, learning periods, and mimium wage rates:

(1) A learner is a person who has had less than eight weeks experience in the past three years upon a stitching operation in the Apparel Industry.

(2) The employment of learners under these Certificates is limited to the operation of stitching machines and for eight (8) weeks for any one learner. During this period, learners shall be paid at least 22½¢ per hour. If experienced workers are paid on a piece rate basis, the same piece rates shall be paid to the learners employed on similar work and they shall receive earnings on such piece rates if in excess of 22½¢ per hour, but in no case less than 22½¢ per hour.

(3) These Special Certificates are issued on representations by the employers that experienced stitching machine operators are not available.

(4) Any one of these Special Certificates may be canceled as of the date of its issue if found that experienced workers were available when the Certificate was issued and may be canceled prospectively or as of the date of violation if found that any of its terms have been violated or that skilled workers have become available.

(5) Under these Special Certificates, no learner shall be employed at a subminimum wage until and unless the Certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.

NUMBER OF LEARNERS

Not in excess of 5% of the total number of stitching machine operators employed in the plant may be employed under any of these Certificates, unless otherwise indicated hereinbelow opposite the employer's name:

NAME AND ADDRESS OF FIRM AND PRODUCT

The Thompson Shirt Company, Brownstown, Pennsylvania (5 learners), shirts.

Warrensburg Shirt Company, Warrensburg, New York, shirts and trousers.

West Shirt Company Union, Mississippi, shirts.

Signed at Washington, D. C., this 26th day of February 1940.

MERLE D. VINCENT,
Authorized Representative of the Administrator.

[F. R. Doc. 40–816; Filed, February 26, 1940; 12:45 p. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE HOSIERY INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Hosiery Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 (Hosiery Wage Order) are issued to the employers listed below effective February 27, 1940, until September 18, 1940, subject to the following terms:

OCCUPATIONS AND WAGE RATES

The employment of learners in the Hosiery Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

[*Here follows, in the original document, a table identical with that appearing on Page 3827 of the "Federal Register" for September 7, 1939.*]

NUMBER OF LEARNERS

Not in excess of 5% of the total number of factory workers employed in the plant may be employed under any of these certificates, unless otherwise indicated hereinbelow.

These Special Certificates are issued ex parte under Section 14 of the said Act, Section 522.5 (b) of Regulations Part 522, as amended. For fifteen days following the publication of this notice the Administrator will receive detailed written objections to any of these Special Certificates and requests for hearing from interested persons. Upon due consideration of such objections as provided for in said Section 522.5 (b), such Special Certificates, or any of them, may be canceled as of the date of their issuance and if so canceled, reimbursement of all persons employed under such certificates must be made in any amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

NAME AND ADDRESS OF FIRM

Belding Hosiery Mill, Belding, Michigan (5 learners).

Signed at Washington, D. C. this 26th day of February 1940.

MERLE D. VINCENT,
Authorized Representative of the Administrator.

[F. R. Doc. 40–817; Filed, February 26, 1940; 12:46 p. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE TEXTILE INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Textile Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued ex parte under Section 14 of the said Act and Section 522.5 (d) of Regulations Part 522, as amended, to the employers listed below effective February 27, 1940, until October 24, 1940, subject to the following terms:

OCCUPATIONS, WAGE RATES, AND CONDITIONS

The employment of learners in the Textile Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

(1) A learner is a person who has had less than six (6) weeks experience in the aggregate in any of the learner occupa-

tions listed below in any branch of the Textile Industry except tufted bedspreads and curtains.

(2) Learners may be employed under these Certificates only in the occupations of machine operating, tending, fixing, and jobs immediately incidental thereto, but not in occupations similar to those performed by the following: sweepers, scrubbers, yard employees, watchmen, clerical workers and supervisors, timekeepers, machine cleaners, janitors, truckers, and employees engaged in similar work, and no learner shall be employed at less than the minimum rate for more than six (6) weeks.

(3) No learner may be paid at a rate less than 25 cents an hour: *Provided, however,* That if experienced workers are paid on a piecework rate, learners shall be paid at least the same piecework rate and shall receive earnings on such rates if in excess of 25 cents per hour but in no event less than 25 cents per hour.

(4) Experienced workers may not be employed at less than the minimum rate and no learner may be employed at less than the minimum rate unless hired when experienced workers were not available. No learner may be employed under these Certificates until and unless a copy of the certificate is posted and kept posted in a conspicuous place in the plant in which learners are to be employed.

(5) These Certificates expire October 24, 1940 and are subject to cancelation sooner by the Administrator or his authorized representatives for cause. These Certificates are issued on representations by the employers that experienced workers are not available and may be canceled as of the date of issue if it is found that they were issued when experienced workers were available and may be canceled prospectively or as of the date of violation if it is found that any of their terms have been violated or that experienced workers have become available. A copy of the employer's certificate must be available at all times for inspection. Altering or attempting to alter any Certificate will render it invalid.

NUMBER OF LEARNERS

Not in excess of three (3) percent of the total number of persons in the learner occupations herein described employed in the plant may be employed under these Certificates unless otherwise indicated hereinbelow opposite the employer's name.

NAME AND ADDRESS OF FIRM AND PRODUCT

Wm. G. Leininger Knitting Co., Denver, Pa. (3 learners), silk and rayon thread.

Signed at Washington, D. C., this 26th day of February 1940.

MERLE D. VINCENT,
Authorized Representative of the Administrator.

[F. R. Doc. 40-818; Filed, February 26, 1940; 12:45 p. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 5833]

IN RE APPLICATION OF GRAND RAPIDS BROADCASTING CORP. (NEW)

Dated, October 16, 1939; for construction permit; class of service, broadcast; class of station, broadcast; location, Grand Rapids, Mich., operating assignment specified, frequency 1200 kc., power 250 w. night—250 w. day; hours of operation, unlimited

[File No. B2-P-2582]

NOTICE OF HEARING

You are hereby notified that the Commission has examined the above-described application and has designated the matter for hearing for the following reasons:

1. To determine the legal, technical, financial, and other qualifications of the applicant to construct and operate the proposed station;

2. To determine whether the granting of the application will tend toward a fair, efficient, and equitable distribution of the radio service;

3. To determine the nature, extent and effect of any interference which would result should the proposed station operate simultaneously with Stations WSAM, WFAM, WJIM, WMPC, and WWAE.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of Section 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

Grand Rapids Broadcasting Corp.,
% Angus D. Pfaff,
932 Military Avenue,
Port Huron, Michigan.

Dated at Washington, D. C., February 24, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 40-812; Filed, February 26, 1940; 11:12 a. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 21st day of February, A. D. 1940.

Commissioners: Ewin L. Davis, Chairman; Garland S. Ferguson, Charles H. March, William A. Ayres, Robert E. Freer.

[Docket No. 3911]

IN THE MATTER OF RETAIL COAL MERCHANTS ASSOCIATION, A CORPORATION, D. WALTON MALLORY, INDIVIDUALLY AND AS PRESIDENT OF RETAIL COAL MERCHANTS ASSOCIATION, EDWIN D. NEWMANN, INDIVIDUALLY AND AS VICE PRESIDENT OF RETAIL COAL MERCHANTS ASSOCIATION, A. HOLLAND WHITE, INDIVIDUALLY AND AS TREASURER OF RETAIL COAL MERCHANTS ASSOCIATION, CHARLES H. HALL, JR., INDIVIDUALLY, AND AS SECRETARY OF RETAIL COAL MERCHANTS ASSOCIATION; L. D. WINGFIELD AND JAMES L. HATCHER, AS CO-OWNERS OF WINGFIELD-HATCHER COAL COMPANY; A. M. HUNGERFORD, DOING BUSINESS AS HUNGERFORD COAL COMPANY; MASSEY-WOOD & WEST, A CORPORATION; SYDNOR-HOWEY & COMPANY, INC., A CORPORATION; D. W. MALLORY & COMPANY, INC., A CORPORATION; ELLISON & HAWES, INC., A CORPORATION; W. E. SEATON & SONS, INC., A CORPORATION, AND GILL FUEL COMPANY, INC., A CORPORATION, MEMBERS OF RETAIL COAL MERCHANTS ASSOCIATION; BLUEFIELD COAL AND COKE COMPANY, A CORPORATION; CABELL COAL COMPANY, INC., A CORPORATION; CABIN CREEK CONSOLIDATED SALES COMPANY, A CORPORATION; A. T. MASSEY COAL COMPANY, A CORPORATION; RED JACKET COAL SALES COMPANY, A CORPORATION; GEORGE W. ST. CLAIR, ROBERT HENRY MOORE, MRS. ROBERT HENRY MOORE, KATHERINE ST. CLAIR SANTORI, AND HOUSTON ST. CLAIR, PARTNERS DOING BUSINESS UNDER THE PARTNERSHIP NAME OF VIRGINIA SMOKELESS COAL COMPANY: WHITE OAK COAL COMPANY, A CORPORATION; AND WYATT COAL SALES COMPANY, A CORPORATION

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U.S.C.A., Section 41),

It is ordered, That John W. Addison, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Monday, March 4, 1940, at ten o'clock in the forenoon of that day (eastern standard time) in Room 357, Federal Building, Richmond, Virginia.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will

then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-803; Filed, February 24, 1940; 9:36 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 21st day of February 1940.

[File Nos. 7-443—7-445]

IN THE MATTER OF APPLICATIONS BY THE NEW YORK CURB EXCHANGE FOR UNLISTED TRADING PRIVILEGES IN GATINEAU POWER COMPANY (FIRST MORTGAGE BONDS, 3¾%, SERIES A, DUE APRIL 1, 1969); GREEN MOUNTAIN POWER CORPORATION (FIRST AND REFUNDING MORTGAGE BONDS, 3¾% SERIES, DUE DECEMBER 1, 1963); PACIFIC LIGHTING CORPORATION ($5 CUMULATIVE DIVIDEND PREFERRED STOCK, WITHOUT PAR VALUE)

ORDER DISPOSING OF APPLICATIONS FOR PERMISSION TO EXTEND UNLISTED TRADING PRIVILEGES

The New York Curb Exchange having made application to the Commission, pursuant to Section 12 (f) of the Securities Exchange Act of 1934, as amended, and Rule X-12F-1, to extend unlisted trading privileges to the above-mentioned securities; and

After appropriate notice a hearing having been held in this matter in Washington, D. C.; and

The Commission having this day made and filed its findings and opinion herein:

It is ordered, Pursuant to Section 12 (f) of the Securities Exchange Act of 1934, as amended, that the instant applications of such exchange be and the same are hereby granted by the Commission to extend unlisted trading privileges to the Gatineau Power Company First Mortgage Bonds, 3¾% Series A, due April 1, 1969; Green Mountain Power Corporation First and Refunding Mortgage Bonds, 3¾% Series, due December 1, 1963; and Pacific Lighting Corporation $5 Cumulative Dividend Preferred Stock, Without Par Value.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-805; Filed, February 24, 1940; 11:25 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 23rd day of February, A. D. 1940.

[File No. 32-197]

IN THE MATTER OF MICHIGAN CONSOLIDATED GAS COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter under the applicable provisions of said Act and the rules of the Commission thereunder be held on March 11, 1940, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Willis E. Monty or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before March 8, 1940.

The matter concerned herewith is in regard to a proposed issue and sale of $2,000,000 of First Mortgage Bonds, 4% Series due 1963, to be sold for cash at private sale directly to Travelers Insurance Company and Prudential Insurance Company of America in equal amounts of $1,000,000 each, at 101½% of the principal amount, plus accrued interest to date of delivery.

The application states that the net proceeds to be received by the company from the sale of the bonds will be used for the purpose of reimbursing its treasury for expenditures made subsequent to September 30, 1938, and to be made during the year 1940 for capital additions to its utility plant.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-807; Filed, February 24, 1940; 11:26 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 23rd day of February, A. D. 1940.

[File No. 60-12]

IN THE MATTER OF STONE & WEBSTER SERVICE CORPORATION

NOTICE OF AND ORDER FOR HEARING TO DETERMINE WHETHER SAID COMPANY SHOULD BE DECLARED TO BE A HOLDING COMPANY

The Commission having reasonable cause to believe that Stone & Webster Service Corporation directly or indirectly exercises (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of Oklahoma Natural Gas Company, a gas utility company operating in Oklahoma and Kansas, as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Stone & Webster Service Corporation be subject to the obligations, duties, and liabilities imposed upon holding companies by the Public Utility Holding Company Act of 1935;

It is ordered, Pursuant to Section 2 (a) (7) (B) of said Act that a hearing be held to determine whether such controlling influence exists and if such controlling influence is found to exist to declare Stone & Webster Service Corporation to be a holding company with respect to Oklahoma Natural Gas Company;

It is further ordered, That such hearing commence on the 14th day of March, 1940 at 10:00 o'clock in the forenoon of that day in the United States Post Office Building in Tulsa, Oklahoma and be continued at such times and places as the officer assigned to preside at such hearing shall designate upon appropriate notice being given to Stone & Webster Service Corporation;

It is further ordered, That James G. Ewell or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter and the officer so designated to preside at any such hearing is hereby authorized to exercise all the powers granted to the Commission under Section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice;

Notice of such hearing is hereby given to Stone & Webster Service Corporation and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceedings shall file a notice to that effect with the Commission on or before the 9th day of March, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-806; Filed, February 24, 1940; 11:25 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its

office in the City of Washington, D. C., on the 23rd day of February, A. D. 1940.

[File No. 65-5]

IN THE MATTER OF MICHIGAN CONSOLIDATED GAS COMPANY AND DILLON, READ & CO.

ORDER TO SHOW CAUSE

Michigan Consolidated Gas Company, a subsidiary of American Light & Traction Company, The United Light and Railways Company and The United Light and Power Company, registered holding companies, having filed an application pursuant to Section 6 (b) of the Public Utility Holding Company Act of 1935 for exemption of the issue and sale of $2,000,000 of First Mortgage Bonds, 4% Series, due 1963; it being stated in the application that said bonds are to be sold privately and not to be resold and that Dillon, Read & Co., a joint stock association engaged in the investment banking and securities underwriting business, is to receive from the applicant a fee in connection with the negotiation or consummation of the sale of said bonds or for services in securing purchasers amounting to a sum which has not yet been determined; a hearing pursuant to such application having been set by the Commission for March 11, 1940; and

It appearing to the Commission that Dillon, Read & Co. may stand in such relation to Michigan Consolidated Gas Company that there is liable to be or to have been an absence of arm's-length bargaining with respect to the transaction whereby Dillon, Read & Co. negotiated or consummated the sale of said bonds or rendered services in securing purchasers; and

It further appearing to the Commission that it is necessary to determine whether the fee to be paid to Dillon, Read & Co. in connection with such services is or is not reasonable, and whether such fee should or should not be paid;

It is ordered, Pursuant to Rule U-12F-2 of the General Rules and Regulations promulgated under the Public Utility Holding Company Act of 1935 that Michigan Consolidated Gas Company and Dillon, Read & Co., and each of them show cause on the 11th day of March, 1940, at ten o'clock in the forenoon of that day in Room 1103 of the Securities and Exchange Building, 1778 Pennsylvania Avenue, N.W., Washington, D. C., why the Commission should not find that Dillon, Read & Co. stands or stood in such relation to Michigan Consolidated Gas Company that there is liable to be or to have been an absence of arm's-length bargaining with respect to the transaction whereby Dillon, Read & Co. negotiated or consummated the sale of said bonds, or rendered services in securing purchasers; and

It is ordered, That Willis E. Monty be and he hereby is designated to preside at the hearing ordered herein. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice; and

It is further ordered, That the proceedings of the Order to Show Cause provided for herein be consolidated with the hearings on the application of Michigan Consolidated Gas Company filed with this Commission pursuant to Section 6 (b) of said Act.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-808; Filed, February 24, 1940; 11:26 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 24th day of February, A. D. 1940.

[File No. 2-4012]

IN THE MATTER OF WINNEBAGO DISTILLING COMPANY

STOP ORDER

This matter coming on to be heard before the Commission on the registration statement (File No. 2-4012) of Winnebago Distilling Company, a Delaware corporation, after confirmed telegraphic notice to said registrant and after personal service upon it of an amended statement of matters to be considered, that it appears that said registration statement includes untrue statements of material facts and omits to state material facts required to be stated therein and omits to state material facts necessary to make the statements therein not misleading, and upon evidence received under the allegations made in the notice of hearing duly served by the Commission upon said registrant; and

The Commission having duly considered the matter and finding that said registration statement includes untrue statements of material facts and omits to state material facts required to be stated therein and omits to state material facts necessary to make the statements therein not misleading, as more fully set forth in Findings and Opinion of the Commission this day issued; and

The Commission now being fully advised in the premises;

It is ordered, Pursuant to Section 8 (d) of the Securities Act of 1933, that the effectiveness of the registration statement filed by Winnebago Distilling Company, a Delaware corporation, be and the same hereby is suspended.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-814; Filed, February 26, 1940; 11:27 a. m.]